

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his )  
capacity as ATTORNEY GENERAL )  
OF THE STATE OF OKLAHOMA and )  
OKLAHOMA SECRETARY OF THE )  
ENVIRONMENT C. MILES TOLBERT, )  
in his capacity as the )  
TRUSTEE FOR NATURAL RESOURCES )  
FOR THE STATE OF OKLAHOMA, )  
Plaintiff, )  
vs. ) 4:05-CV-00329-TCK-SAJ  
TYSON FOODS, INC., et al, )  
Defendants. )

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THE VIDEOTAPED DEPOSITION OF  
ROBERT TAYLOR, PhD, produced as a witness on  
behalf of the Defendants in the above styled and  
numbered cause, taken on the 8th day of January,  
2008, in the City of Tulsa, County of Tulsa, State  
of Oklahoma, before me, Lisa A. Steinmeyer, a  
Certified Shorthand Reporter, duly certified under  
and by virtue of the laws of the State of Oklahoma.

## A P P E A R A N C E S

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-and-

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(Via phone)

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## I N D E X

W I T N E S S

P A G E

ROBERT TAYLOR, PhD

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1 (Whereupon, the deposition began at  
2 9:25 a.m.)

3 VIDEOGRAPHER: We are now on the Record for  
4 the deposition of Dr. Robert Taylor. Today is  
5 January 8th, 2008. The time is 9:25 a.m. Would 09:26AM  
6 counsel please identify themselves for the Record?

7 MR. RIGGS: David Riggs and Claire Xidis  
8 and Louis Bullock for the State.

9 MR. ELROD: Hi, Louis. John Elrod for  
10 defendant, Simmons Foods. 09:26AM

11 MR. BOND: Michael Bond for Tyson Foods,  
12 Tyson Chicken, Tyson Poultry and Cobb-Vantress.

13 MR. GRAVES: James Graves for George's,  
14 Inc., and George's Farms, Inc.

15 MR. HIXON: Philip Hixon for Peterson 09:26AM  
16 Farms, Inc.

17 MR. SANDERS: Bob Sanders for Cal-Maine.

18 MR. TUCKER: Colin Tucker for Cargill  
19 Turkey Production and Cargill.

20 VIDEOGRAPHER: Thank you. The witness may  
21 be sworn in.

22 MS. GRIFFIN: Excuse me. Jennifer Griffin  
23 on the phone for Willow Brook Foods.

24 MR. RIGGS: Okay, and I would like the  
25 Record to reflect that we are reserving objections 09:26AM

1 except those as to form.

2 ROBERT TAYLOR, PhD,  
3 having first been duly sworn to testify the truth,  
4 the whole truth and nothing but the truth, testified  
5 as follows:

6 DIRECT EXAMINATION

7 BY MR. ELROD:

8 Q Dr. Taylor, my name is John Elrod. I  
9 represent Simmons Foods. Nice to meet you, sir.

10 Would you tell us how much chicken litter is 09:27AM  
11 produced in the Illinois River watershed?

12 A I have not calculated that. The number I have  
13 seen is 300 -- if I remember correctly, 347,000  
14 tons.

15 Q And where did you see that number? 09:27AM

16 A I don't recall.

17 Q Do you know who generated that number?

18 A I think it was the plaintiffs generated that.

19 Q State of Oklahoma?

20 A State of Oklahoma, yes. 09:27AM

21 Q And when did you see the number?

22 A I saw it yesterday.

23 Q Did you see it yesterday for the first time?

24 A I do not recall seeing that number before  
25 then. 09:28AM

1 Q So would it be true, sir, that you had not  
2 utilized that number in the formation of your  
3 opinions in this case?

4 A I had not used that particular number, no.

5 Q Had you used any number in the formation of 09:28AM  
6 your opinions in this case?

7 A There are some studies done by a University of  
8 Arkansas ag economist that show waste production in  
9 the IRW and also Arkansas studies showing pounds per  
10 bird or pounds of waste generated per pound of bird 09:28AM  
11 produced.

12 Q And what does the University of Arkansas have  
13 to say about the amount of tons produced in the  
14 watershed?

15 A I don't recall the number. 09:28AM

16 Q Would it be true then that you did not utilize  
17 that number in the formation of your opinions in  
18 this case?

19 A Yes.

20 Q And what did -- who else did you say had 09:28AM  
21 produced a number you've seen?

22 A In the University of Arkansas poultry center  
23 publication Avian Advice there are a few articles  
24 that deal with poultry litter and litter production,  
25 and one of those is by Tabler and someone else, and 09:29AM

1 it showed pounds per -- pounds of waste produced per  
2 pound of bird or per bird, I don't recall which of  
3 those, maybe both of them, and --

4 Q Why was it -- why did you not consider it  
5 important to your opinions in this case to know the 09:29AM  
6 amount of chicken litter produced in the Illinois  
7 River watershed?

8 A I have not been asked, at least for purposes  
9 here, to calculate the total amount produced or the  
10 amount that would need to be transferred out. 09:30AM

11 Q I guess I thought I saw somewhere in your  
12 opinions that you addressed the issue of  
13 transportation costs. Is that not true?

14 A I addressed the cost of transporting litter  
15 out of the watershed, and it was based on the Tabler 09:30AM  
16 study that I've already mentioned that had the  
17 pounds per bird.

18 Q How much chicken litter is applied, land  
19 applied in the Illinois River watershed?

20 A I do not have information on how much of the 09:30AM  
21 litter is transported out or moves out of the  
22 watershed at this point in time.

23 Q So that information would not have been  
24 utilized by you in the formation of your opinions in  
25 this case; is that true? 09:31AM



1 A That is true.

2 Q How much chicken litter was transported out of  
3 the Illinois River watershed -- produced in the  
4 watershed and transported out of the watershed in  
5 the year 2007?

09:31AM

6 A I do not know.

7 Q Why was it not important in the formation of  
8 your opinions in this case to know that number, sir?

9 A For this affidavit I was asked to look at the  
10 cost of transporting it out, and I put that in terms  
11 of pounds of litter and the cost of taking that out,  
12 and also put it in terms of cost per pound of bird  
13 produced of taking it all out, and footnoted that  
14 that could be scaled back depending on distance and  
15 also depending on how much needs to be hauled out.

09:31AM

09:31AM

16 Q What is the value in terms of commercial  
17 fertilizer equivalencies of the nitrogen that's  
18 contained in the chicken litter that's produced in  
19 the Illinois River watershed?

20 A What is the value of the nitrogen only?

09:32AM

21 Q Yes, sir.

22 A Well, nitrogen occurs in many different forms  
23 and, you know, I'm not a scientist. So I'll just  
24 talk about nitrogen in general terms as you are, but  
25 in terms of valuing the nutrient content of poultry

09:32AM

1 litter, there is a problem because you have various  
2 plant nutrients, certainly the three primary ones,  
3 N, P and K, and some studies, including one by the  
4 Oklahoma NRCS, calculates the amount of nitrogen and  
5 then puts a value on that. That is problematic  
6 because the plant nutrients are not in the right  
7 proportion. That does establish a maximum value,  
8 maximum gross value but it does not establish a net  
9 value. I don't know what nitrogen fertilizer is  
10 selling for in -- recently. It certainly goes up  
11 with the price of natural gas and it depends on the  
12 form, but something on the order of 30 to 40 cents  
13 per pound of nitrogen.

09:33AM

09:33AM

14 Q My question to you, sir, is, is the gross  
15 value. That's what I want to know right now. What  
16 is the gross value of the nitrogen based on  
17 commercial fertilizer prices of the chicken litter  
18 that is produced in the Illinois River watershed?

09:33AM

19 A I have not specifically calculated that.

20 Q So what is the 30 to 40 cents; what is that a  
21 measure of?

09:33AM

22 A That would be the, if I remember correctly,  
23 the price of anhydrous ammonia, but I haven't looked  
24 at that in the last couple of years, and those  
25 prices may have gone up but, as I recall, that is

09:34AM

1 the price, but I've not looked at that as part of  
2 this study.

3 Q What's the 30 to 40 cents represent?

4 A Per pound of nitrogen obtained from anhydrous  
5 ammonia, which is the common form of nitrogen that 09:34AM  
6 is applied to nitrogen intensive crops in the  
7 Midwest, but there are other forms, urea and so  
8 forth, that are more expensive.

9 Q What's the source of urea?

10 A I'm an economist. I know that is one form of 09:34AM  
11 nitrogen that is sometimes used in commercial  
12 agriculture but --

13 Q Do you not know the source of urea?

14 A No.

15 Q But the source of some nitrogen that's used 09:35AM  
16 for fertilizer purposes, for commercial fertilizer  
17 purposes is natural gas?

18 A Natural gas is used to make anhydrous ammonia.  
19 That's my understanding.

20 Q So it would be true then that the -- as 09:35AM  
21 natural gas prices increase, the cost of the  
22 production and thus the cost to the consumer of  
23 natural gas based nitrogen fertilizer would also  
24 increase?

25 A That is generally correct. 09:35AM

1 Q But as we're sitting here today, you are  
2 unable to tell us or the court the gross value based  
3 on commercial fertilizer equivalence of the nitrogen  
4 that's produced in -- by the chicken litter in the  
5 Illinois River watershed; is that true?

09:36AM

6 A I do not have the number. That could be  
7 calculated. There is information from Arkansas and  
8 other places on the amount of nitrogen in poultry  
9 waste. It varies some, and some of the studies give  
10 mean and max, and you can take that number and then  
11 get the anhydrous price, and that establishes a  
12 maximum gross value for nitrogen in poultry waste.

09:36AM

13 Q The answer to my question, sir, is, that as we  
14 sit here today, you cannot give us that number; is  
15 that true?

09:36AM

16 A I do not recall the number, no.

17 Q Do you even know the number?

18 A I can talk in broad ranges. Seems like  
19 something, 60 to 80 pounds of nitrogen, not all of  
20 which is immediately available to plants, and I've  
21 stated what I think is the anhydrous price with  
22 qualification. It may have gone up recently.

09:37AM

23 Q Sir, let me be as plain as I can. I'm not  
24 trying to be argumentative with you but you're not  
25 answering my question. The question is very simple.

09:37AM

1 The question is, are you able to give us today as  
2 you sit here the commercial fertilizer equivalent  
3 value of the nitrogen that's produced by chicken  
4 litter in the Illinois River watershed?

5 A I am not. 09:37AM

6 Q Same question for phosphates. Are you able to  
7 give us today the commercial fertilizer equivalent  
8 value of the phosphates that are contained in  
9 chicken litter that's produced in the Illinois River  
10 watershed? 09:37AM

11 A I am not.

12 Q Why was it not important to your opinions in  
13 this case that you know those numbers?

14 A I've seen the calculations done by others, and  
15 I already mentioned the Oklahoma NRCS and a brochure 09:38AM  
16 that they have showing those calculations, and I've  
17 mentioned why I think those are in error, but I was  
18 not asked for purposes of this affidavit to look  
19 into that.

20 Q One of the documents that you have relied on 09:38AM  
21 in this matter, which we can pull out and talk about  
22 later in the deposition, talks about George's 50  
23 million dollar value chicken litter. Do you  
24 remember that particular article?

25 A I do not. 09:38AM

1 Q If the undisputed testimony in this case is  
2 that the commercial fertilizer equivalent value of  
3 the nitrogen and phosphorus contained in chicken  
4 litter is in the 50 million dollar range or more,  
5 you would not be in a position to argue with that  
6 number; isn't that true?

09:39AM

7 A I'm not in a position to argue with that  
8 specific number. I have already stated that the  
9 calculations I have seen that simply take and place  
10 a value on the N, place a value on P, place a value  
11 on K, add those up, establish a maximum value, and  
12 that is not appropriate for economic analysis.

09:39AM

13 Q Because all of those nutrients cannot be  
14 utilized by crops; is that your point?

15 A Because they occur in the wrong proportion for  
16 most crops.

09:39AM

17 Q All right. What would be the number in the  
18 correct proportion for crops?

19 A I have not analyzed that. There are agronomic  
20 recommendations for N, P and K for different crops  
21 that are based on soil tests, at least for the N and  
22 the P -- I mean for the P and the K. Those are  
23 available in agronomy manuals and in cooperative  
24 extension publications or by specialists from  
25 University of Arkansas and Oklahoma State.

09:40AM

09:40AM

1 Q Let's talk in very general terms and I'm just  
2 going to use the 50 million dollar figure right now  
3 and that will all come out later, but assuming for  
4 purposes of this question that the equivalency  
5 values of the nutrients contained in chicken litter  
6 used in this watershed is in the 50 million dollar  
7 range, would it be true, sir, that if the attorney  
8 general of Oklahoma gets his way and all of the  
9 chicken litter is required to be shipped out of the  
10 watershed, that that would be 50 million dollars in  
11 agronomically beneficial products that would be not  
12 utilizable in this watershed; isn't that true?

09:40AM

09:40AM

13 MR. RIGGS: Object to the form.

14 A That is not a proper way of analyzing the net  
15 economic value of the litter.

09:41AM

16 Q Why isn't it?

17 A Because it's gross.

18 Q Okay.

19 A And I've already mentioned that it occurs in  
20 the wrong proportions and that's upper limit.

09:41AM

21 Q So there's a net number that would be  
22 appropriate to use; is that true?

23 A There is.

24 Q Okay, and how do you calculate that net  
25 number?

09:41AM

1 A You have to look at the cost of applying the  
2 litter. You have to look at the soil test levels  
3 and the plant needs, and with all of that detailed  
4 information, then one could come up with a net  
5 value.

09:42AM

6 Q But you have not done that?

7 A I have not done that.

8 Q Assuming the people who are working for us do  
9 that and arrive at a number utilizing the  
10 methodology you just described, you will still agree  
11 with me that there will be a substantial amount of  
12 value to the forage and hay farmers of northeast  
13 Oklahoma that will not be available to them if the  
14 attorney general gets his way in this case; isn't  
15 that right?

09:42AM

09:42AM

16 MR. RIGGS: Object to the form.

17 A I don't know what you mean by substantial.

18 Q Well, what if the number is -- the net number  
19 ends up being 25 or 30 million dollars instead of  
20 50?

09:42AM

21 A I don't think it's anywhere near that high  
22 but, again, I have not carefully analyzed that and  
23 I'm not going to speculate on it.

24 Q Okay. I don't have any problem with you not  
25 speculating here as long as you don't give the

09:42AM



1 number at trial. Will you agree not to give the  
2 number at trial?

3 A Yes.

4 Q Okay.

5 MR. RIGGS: Counsel, I'm assuming you were 09:43AM  
6 referring to the preliminary injunction hearing?

7 MR. ELROD: Yes, sir.

8 Q If the attorney general of Oklahoma gets his  
9 way and a moratorium is placed on utilization of  
10 chicken litter in the IRW, what's going to happen to 09:43AM  
11 cattle farmers, hay crops and forage?

12 MR. RIGGS: Object to the form.

13 A The answer has to be separated into short term  
14 and long term. Short term, if what I've seen that  
15 the P levels are already at or near the maximum 09:44AM  
16 recommended values in terms of P and K, there will  
17 be no effect in terms of the nitrogen not being used  
18 on the crop, it depends on how much commercial  
19 fertilizer is used, if any, and it depends on the  
20 crop, the kind of forage. I mean if it's a 09:44AM  
21 leguminous crop, there wouldn't be any impact of not  
22 having the nitrogen there.

23 Q How many property owners who own more than  
24 five acres are there in the Illinois River  
25 watershed? 09:44AM

1 A I don't know.

2 Q Would you be surprised if the number is over  
3 10,000?

4 A The property owners in the -- no, I wouldn't  
5 be surprised.

09:44AM

6 Q Okay, and how many soil tests are conducted  
7 per year on the Oklahoma side in the Illinois River  
8 watershed?

9 A I don't know the number.

10 Q What about the Arkansas side; do you know that  
11 number?

09:45AM

12 A I don't know that number either.

13 Q Would you imagine that it's a very small  
14 percentage of the total property owners?

15 A Well, I don't know what you mean by very  
16 small. I would think most of the farmers that have  
17 a fairly large acreage, you know, even 50 acres or  
18 so of cropland or pastureland on which to apply it,  
19 would have recently done it because of NRCS

09:45AM

20 requirements and best management practices and so  
21 forth, but if you are talking about homeowners and  
22 people with a small hobby farm, it's very unlikely  
23 they've ever had it tested.

09:45AM

24 Q Yes, sir. Do you understand that in Oklahoma  
25 one can freely land apply commercial fertilizer

09:46AM

1 without the necessity of a soil test?

2 A I'm not aware of any regulation requiring them  
3 to have it tested. The service is available but I'm  
4 not aware of any requirement.

5 Q Now, you are at Auburn University; is that 09:46AM  
6 true?

7 A Correct.

8 Q You've also worked at Mizzou; is that right?

9 A I was a graduate student, a PhD student at  
10 Mizzou. 09:46AM

11 Q What other states have you done any kind of  
12 consulting work in?

13 A Any kind of consulting work?

14 Q Yes, sir, uh-huh.

15 A That's hard to define. You mean recently? 09:47AM

16 Q Let me be more specific. What about  
17 Mississippi?

18 A Mississippi, I have not.

19 Q Georgia?

20 A Georgia, I have. 09:47AM

21 Q Arkansas?

22 A Arkansas, I don't think so.

23 Q Virginia?

24 A No.

25 Q Minnesota? 09:47AM

1 A No.

2 Q Texas?

3 A Yes.

4 Q Based on the work that you do, sir, are you

5 aware of whether any of the following states, and I 09:47AM

6 pick these states because of chicken production,

7 Alabama, Georgia, Mississippi, Arkansas, Virginia,

8 Minnesota or Texas, any of those states, either

9 through governmental regulations or governmental

10 policy, consider chicken litter to be a hazardous 09:48AM

11 substance?

12 A I'm not familiar with all of the state laws

13 pertaining to hazardous substances.

14 Q But you've done a lot of work in the area of

15 chicken litter and chicken companies and chicken 09:48AM

16 production, have you not, sir?

17 A Yes.

18 Q Have you ever even heard a whiff of a rumor

19 that any of those states treat chicken litter as a

20 hazardous substance? 09:48AM

21 A I have not.

22 Q Do you know of any state in the United States

23 of America that treats chicken litter as a hazardous

24 substance?

25 A I'm not aware of any. 09:48AM

1 Q Okay. We talked about the sources of urea,  
2 and what about phosphates, commercial phosphates?

3 A You mean the sources?

4 Q Yes, sir. They're mined; phosphate is mined,  
5 isn't it? 09:49AM

6 A I think in large part it's mined.

7 Q And most of it is mined outside of the United  
8 States, isn't it?

9 A I haven't looked at the numbers, but that is  
10 my understanding, that in recent years it's been 09:49AM  
11 largely mined outside.

12 Q So it would be true, would it not, sir, that  
13 in order to get it to a 40-acre farm in Adair  
14 County, Oklahoma, it's got to be mined elsewhere,  
15 placed on a ship, sent across the ocean, transported 09:49AM  
16 by truck or rail or barge to the state of Oklahoma,  
17 placed in a truck, taken to a 40-acre farm in Adair  
18 County and spread; did I get that about right?

19 MR. RIGGS: Object to the form.

20 A Generally it seems about right, but often it's 09:49AM  
21 in a blend with different mixes of N, P and K.

22 Q And the delivery methodology I just described  
23 to you would be compared to phosphorus also being  
24 available coming out the rear end of a chicken in  
25 Adair County, Oklahoma right on your neighbor's 09:50AM

1 property; isn't that fair?

2 A It's in a different form.

3 Q But it's utilized as a fertilizer, isn't it?

4 A Yes.

5 Q And have you ever seen or performed any 09:50AM

6 studies yourself in the current vernacular that

7 would describe the carbon footprint necessary to get

8 the phosphorus we just described from some foreign

9 county to Adair County, Oklahoma compared to coming

10 out the butt end of a chicken and being transported 09:50AM

11 by truck from your neighbor's place to your house?

12 A I have not looked at the carbon footprint of

13 that or the footprint, carbon footprint for the feed

14 that goes into the bird and so forth.

15 Q I think I asked you how much chicken litter is 09:50AM

16 produced in the watershed and you told me you didn't

17 know. Do you know the number of active chicken

18 houses in the watershed?

19 A Some time back when I talked to plaintiff

20 attorneys, it's my understanding they had identified 09:51AM

21 3,600 and some houses from the air but some of those

22 were no longer operational, and it was on the order

23 of 2,000 to 2,500 in the IRW, Oklahoma and Arkansas

24 together.

25 Q 2,000 -- when were you given the 2,000 to 09:51AM

1 2,500 number; was that yesterday also?

2 A No. That was back in September or early  
3 October.

4 Q Yesterday you were told that 347,000 tons of  
5 litter was produced in the IRW? 09:52AM

6 A Annually.

7 Q Annually. Generated by how many houses?

8 A The number was not mentioned to me and I  
9 didn't inquire.

10 Q Well, do you believe that the -- that 09:52AM  
11 Oklahoma's position in this case is that it takes  
12 2,000 to 2,500 houses to generate 347,000 tons?

13 A I don't know if that's their position or not.

14 Q Has anybody from the State of Oklahoma ever  
15 told you what they believe the amount generated on 09:52AM  
16 average per house is?

17 A They have not, but as I mentioned earlier,  
18 there's the study by Tabler and others showing the  
19 pounds per bird or per pound of bird produced.

20 Q Let me you hand a copy of your CV and I'd like 09:53AM  
21 to ask you some questions about it.

22 A Okay.

23 MR. ELROD: I forewarned you that I was not  
24 going to bring a bunch of paper.

25 MR. RIGGS: I think we have a copy of 09:53AM

1 everything.

2 MR. ELROD: I have one more if anybody  
3 wants it.

4 MR. RIGGS: It might take us a little time  
5 to catch up with you, John, but we've got something 09:53AM  
6 if we need it.

7 MR. ELROD: Okay. I went to a deposition  
8 in Oklahoma City with three boxes like that and I  
9 used that much.

10 MR. RIGGS: Let's try to duplicate that 09:53AM  
11 today.

12 MR. ELROD: My staff was very upset with me  
13 when I returned with all those three boxes.

14 MR. RIGGS: Yeah. You're my kind of  
15 lawyer, John. 09:53AM

16 MR. ELROD: Just the carbon footprint  
17 necessary to generate all that paper was hellacious.

18 Q Doctor, I'm not going to make it a part of  
19 this Record unless opposing counsel wants to, but  
20 I'm looking at a copy of your CV that was supplied. 09:54AM  
21 It says you started out at your higher education in  
22 Tishomingo, Oklahoma?

23 A Correct.

24 Q Did you -- are you an Oklahoma boy?

25 A Yes. 09:54AM



1 Q Where did you grow up?

2 A I was -- my parents lived in Tishomingo, and I  
3 was born in Auburn, and we stayed in Tishomingo  
4 about a year and then moved to Butner, Oklahoma,  
5 north of the Wewoka oil field community, which no 09:54AM  
6 longer exists. Went to -- my dad was a teacher, and  
7 they were going to consolidate the next year. So we  
8 went to Wilson one year and in '56 went back to  
9 Tishomingo.

10 Q Okay. So you graduated from Tishomingo High 09:54AM  
11 School?

12 A Correct.

13 Q What does ALFA stand for; what does that mean?

14 A Well, first, the eminent scholar title is  
15 unusual. That, as far as I know, exists only in the 09:55AM  
16 states of Florida and Alabama. Back in the mid  
17 '80's they -- the state of Alabama started a program  
18 where they would almost match private contributions  
19 for endowed chairs, and they called that the eminent  
20 scholar program. The ALFA comes from -- the private 09:55AM  
21 donation was from ALFA Insurance Company, which was  
22 an arm of the Alabama Farmers Federation, but the  
23 whole endowment is held by the alumni foundation  
24 with no strings to ALFA Insurance or Alabama Farmers  
25 Federation. 09:56AM

1 Q What is the EcoFair Trade Dialogue Project?

2 A That is just a group that has been discussing  
3 issues, excuse me, of fair trade versus free trade.

4 Q What is the difference between fair trade and  
5 free trade? Can you tell me the answer to that 09:56AM  
6 question in one minute or less?

7 A The word free trade has many different  
8 meanings and because of that, I can't answer it in  
9 one minute. Some consider free trade to be unfair  
10 because of implicit subsidies to one country and not 09:56AM  
11 to another or things like that.

12 Q So what is the purpose of the Dialogue  
13 Project?

14 A For people to talk about fair trade policies,  
15 but I'm not a central participant in that. I simply 09:57AM  
16 serve as a consultant, and they sent me a draft  
17 report and asked for my comments, and that's the sum  
18 total of my involvement in that.

19 Q Page 3, I'm just curious why it is that you  
20 have this JFK quote in your -- what's that all 09:57AM  
21 about?

22 A That was an award that the Organization For  
23 Competitive Markets presented to me and one to  
24 several others, and that is what they said at the  
25 time. They had a plaque for everybody and forgot 09:57AM

1 mine and I never got a plaque showing it, which  
2 doesn't bother me, but it was a John Helmuth award,  
3 but the plaques the others got had this quotation on  
4 it.

5 Q What is R-CALF? 09:58AM

6 A R-CALF is a cattlemen's organization,  
7 independent cattlemen's organization that formed  
8 eight or ten years ago that has rapidly grown.

9 Q What is your position, if any, with R-CALF?

10 A I serve as a resource person to them. I 09:58AM  
11 have --

12 Q Are you paid?

13 A No, and I do not vote --

14 Q So --

15 A -- by choice. 09:59AM

16 Q So this is a voluntary activity on your part?

17 A It is a voluntary outreach under the auspices  
18 of Auburn University.

19 Q Is it a cause in which you personally believe?

20 A Parts I believe in; parts I don't. 09:59AM

21 Q What parts do you believe in?

22 A They've got a long policy statement so --  
23 parts of which I have not even read carefully.

24 They've been very active over Mad Cow and litigation

25 dealing with Mad Cow Disease and Canadian cattle and 09:59AM

1 so forth. I've had very limited involvement,  
2 essentially no involvement in that thrust. They  
3 have one thrust to get country of origin labeling  
4 for beef and pork.

5 Q Let me cut you short, if I could, and I guess 10:00AM  
6 I'm really more interested in the economic aspect of  
7 whatever their beliefs are, and I'm very interested  
8 in their position in regard, if they have one, in  
9 regard to producers versus packers and stockyards,  
10 some of the issues that were involved in the Pickett 10:00AM  
11 case.

12 A Well, you confused me when you added packers  
13 and stockyards because I think of the Packers and  
14 Stockyard Act. Okay?

15 Q Right. I'm very familiar with that. 10:00AM

16 A Versus producers. So what part of the  
17 question do you want me to address first?

18 Q Well, I'm interested in knowing what their  
19 position is, if any, in regard to the economic  
20 relationship between cattlemen who produce cattle -- 10:01AM

21 A Uh-huh.

22 Q -- and the IBP's and Montforts of the world.

23 A I don't think Montfort exists anymore.

24 Q Well, I know it doesn't. It's morphed into  
25 something else, but you get my drift? 10:01AM

1 A I get your drift. They feel like with the  
2 rapid consolidation in beef packing in the last  
3 fifteen years, that the balance of power has shifted  
4 to favor the packers as buyers over the independent  
5 cattlemen. They have a broad range of policies 10:01AM  
6 addressing different issues related to that, some of  
7 which I agree to and some of which I don't, and my  
8 role is they ask me to react, and I give them my  
9 economic reasoning and leave it there.

10 Q What are their positions with which you agree 10:02AM  
11 in the area we just discussed?

12 A I fully agree that what's known as captive  
13 supply arrangements in the slaughter cattle  
14 business, that the packers give feeders that -- and  
15 it's in Congressional testimony where I've 10:02AM  
16 pinpointed this. My problem is that the dominant  
17 captive supply arrangement ties the base price --  
18 the feeder that has one of those arrangements, it  
19 ties it to an announced cash market price or an  
20 in-plant average price, and that distorts packers' 10:02AM  
21 incentives, and it's a multiplier incentive to  
22 manipulate the market.

23 Q Consciously manipulate the market?

24 A Consciously or unconsciously.

25 Q And that's what the Pickett case was about, 10:03AM

1 wasn't it?

2 A That's what the Pickett case was about, yes.

3 Q And at the end of the day your side lost the  
4 Pickett case, didn't they?

5 MR. RIGGS: Object to the form. 10:03AM

6 A I was simply an expert witness. The  
7 plaintiffs lost the case because the presiding judge  
8 at trial said that there was not sufficient evidence  
9 on which the jury could base their decision about  
10 whether Tyson, IBP before that, had a legitimate 10:03AM  
11 business reason, and that overturned all of it, you  
12 know, threw it all out.

13 Q And the judge in that case was critical of  
14 your testimony, wasn't he?

15 A He was critical at one point, and he did 10:04AM  
16 arguments with lawyers over jury instructions. He  
17 did not exclude any of my testimony.

18 Q I understand he didn't exclude it, but he was  
19 critical of it, wasn't he?

20 A He had a one line in there, yes. 10:04AM

21 Q What was that; what did he say about it?

22 A He said I'd like to say, Dr. Taylor, you're  
23 nuts.

24 Q Yeah, I thought that's what it was. All  
25 right. What I'm really trying to get at, we'll 10:04AM

1 probe further into this whole area, is whether you  
2 have a personal prejudice towards companies like  
3 Tyson and chicken producers based on your notion of  
4 the way the world ought to be as opposed to the way  
5 it is. I'm not asking you to respond. I'm just 10:05AM  
6 telling you that I'm going to probe those areas with  
7 you over the next few hours.

8 A Well, I want to respond.

9 Q Go ahead.

10 A I don't come at this from any logical position 10:05AM  
11 and I don't have, you know, any ill will towards any  
12 of the corporations that are involved. There are a  
13 few business practices I would like to see changed,  
14 but I don't have any axe to grind.

15 Q What are those business practices in the 10:05AM  
16 chicken context?

17 A The chicken context would be to balance out  
18 the power in negotiating contracts.

19 Q Okay. What else?

20 A That's the principal one. 10:05AM

21 Q Any others?

22 A I would like to see more information  
23 available, made available to growers, information  
24 that the integrators seem to have that -- on  
25 individual flocks that the growers don't necessarily 10:06AM

1 have, and I think if growers had that, efficiency of  
2 production could be improved.

3 Q What information?

4 A Many of the integrators participate in a  
5 common reporting service called Agri Stats. There 10:06AM  
6 used to be an Agrimetrix, and they're one and the  
7 same now, and they have very detailed flock  
8 information by complex there that -- much of which  
9 is generally not made available to growers.

10 Q And of what benefit would it be to growers if 10:06AM  
11 they subscribed to Agri Stats?

12 A I don't mean subscribe. I mean the  
13 integrators simply turned that over on detailed  
14 flock information, on breeds, feed ingredients and  
15 so forth. 10:07AM

16 Q What is it about feed ingredients that would  
17 be important for the growers to know?

18 A Well, there's several types of feeds, starting  
19 with starter and so forth, and I would think that  
20 the grower might be a better manager if he knew 10:07AM  
21 exactly the breed of the bird. They have -- most of  
22 the growers have a tremendous amount of experience  
23 with the flocks and -- but the main thing I would  
24 like to see changed is a -- is to balance the power  
25 in contracting. 10:07AM



1 Q Okay.

2 A And that can go either way. It can get out of  
3 line where the growers would have too much power  
4 over the integrators, and that does not lead to  
5 economic efficiency either. So I'm just saying 10:08AM  
6 balanced power, but it can get out of whack either  
7 way.

8 Q Have you now fully answered my question of  
9 what bones you have to pick with the way things are  
10 now in the chicken industry? 10:08AM

11 A I don't have bones to pick. I come at this  
12 from economic analysis on the need to balance power  
13 in markets, and that can be a market for contracts.

14 Q Have you now fully answered my question in  
15 terms of your objective economic assessment of what 10:08AM  
16 the relationship between growers and integrators  
17 ought to be?

18 A I think so.

19 Q Just want to make sure we captured everything.

20 A May I get some coffee? 10:08AM

21 Q You can take a break at any time you want to.  
22 You're in charge of that.

23 MR. ELROD: Let's just take five minutes.

24 VIDEOGRAPHER: We're now off the Record.

25 The time is 10:08 a.m. 10:09AM

1 (Following a short recess at 10:09  
2 a.m., proceedings continued on the Record at 10:14  
3 a.m.)

4 VIDEOGRAPHER: We are back on the Record.

5 The time is 10:14 a.m. 10:14AM

6 Q Doctor, what do you know about the movement of  
7 growers between integrators?

8 A There's no public information on it.  
9 Observation suggests that in any given year it's a  
10 very small proportion and, of course, that depends 10:15AM  
11 on the number of integrators.

12 Q Well, you'll agree with me that as far as the  
13 United States of America goes, that in northwest  
14 Arkansas and northeast Oklahoma a grower would have  
15 perhaps the greatest availability of integrators to 10:15AM  
16 that grower than anyplace else in the country?

17 A Probably.

18 Q You talk in your opinions about adhesion  
19 contracts, and we're going to get into that in  
20 greater depth as we go through your opinions. 10:15AM

21 A Okay.

22 Q But are you -- is it your testimony that given  
23 the fact that growers have no negotiating  
24 capabilities in terms of the contents of the  
25 contract that they sign, wouldn't it also follow 10:16AM

1 that there would not be movement of any substantial  
2 amount of growers between companies?

3 A Well, I understand that there's not  
4 substantial movement of growers between companies  
5 from year to year.

10:16AM

6 Q Okay. What impact would it have -- what  
7 impact would it have on the quality of your opinions  
8 in this case if in fact there has been substantial  
9 movement of growers between companies in the IRW?

10 A It would not change my opinion about the lack  
11 of bargaining power, and to comment further on that,  
12 I would need to know what kind of upgrades or other  
13 changes were required as a condition on that change  
14 to another integrator.

10:16AM

15 Q Do you know whether there's been -- this is  
16 going to be slightly different. Do you know whether  
17 there's been any substantial movement of growers to  
18 other companies from their originally -- from their  
19 original company in the IRW because they could get  
20 higher pay with Company B than they were getting  
21 with Company A?

10:17AM

22 A There's no public information on that, and I  
23 do not have any data specific to the IRW on number  
24 changing.

25 Q Are you familiar with Claxton Poultry; did I

10:17AM

1 get that name right?

2 A I've heard the name but that's --

3 Q In Claxton, Georgia.

4 A No, I'm really not familiar with them.

5 Q Have you ever heard of the notion that the 10:18AM  
6 right to grow birds for an integrator because one  
7 has a contract with an integrator, that that right  
8 has value in and of itself in the marketplace?

9 A It is -- well, it may have value if they're  
10 allowed to freely change, but the way I understand 10:18AM  
11 the industry generally is that if a grower decides  
12 to sell his or her operation and it goes on the real  
13 estate market, the contract does not automatically  
14 go with it, that the integrator has to approve it,  
15 and I've heard of cases where that happened even 10:19AM  
16 with intergenerational transfers within a family.

17 Q And that makes -- that notion that you just  
18 described makes sense from the standpoint of the  
19 company, doesn't it; they want responsible growers?

20 A It depends. Certainly they need responsible 10:19AM  
21 growers, but it does give them more control over a  
22 grower and, you know, if they wanted to, they could  
23 not approve any buyer, and since these are largely  
24 single-use facilities, it would have no value.

25 Q Do you think that the integrators abuse the 10:20AM

1 growers?

2 A I think there have been a few cases of that.

3 Q Can you tell me what those cases are, who,  
4 where, what the company was, what happened?

5 A There's been litigation, and the main one that 10:20AM  
6 comes to mind is -- I think it's Burtle -- Burger v.

7 Cagle where a jury found in favor of Burger, the  
8 grower, over activities. As I understand the case,  
9 I was not involved, but Burger was a former Georgia

10 state patrolman who became a contract grower and 10:20AM

11 then tried to organize growers, and Cagle, I don't  
12 know if they didn't deliver chicks or what happened,

13 but there was litigation over that, and there are

14 other allegations like that, some coming out in

15 favor of the integrator and that one in favor of the 10:21AM

16 grower.

17 Q Can you name any others besides that case, any  
18 other situations where integrators have abused  
19 growers?

20 A You know, not that I can document, but you 10:21AM

21 used the word abused and, you know, that is

22 certainly one issue or potential issue in any kind

23 of business arrangement, and the other one is just a

24 pure monopsony or buyer power that the integrator

25 has over the grower and the contract terms, and that 10:22AM

1 doesn't require -- you know, the textbook model is  
2 not based on an assumption of abuse. It's simply an  
3 effect, and the evil intent may or may not be there.

4 Q Have you now fully answered my question of  
5 whether you can provide me any examples where 10:22AM  
6 integrators have abused growers?

7 A Where they have abused growers? That's the  
8 only specific one that comes to mind.

9 Q All right, sir. Now, what's the word?

10 A Monopsony. 10:22AM

11 Q Monopsony?

12 A That is the buyer equivalent of monopoly.  
13 Monopoly is seller side power. Monopsony is buyer  
14 side power.

15 Q Monopsony. I'd like to explore with you for a 10:23AM  
16 few minutes the issue of risk assignment in the way  
17 the poultry industry has developed in the last 50  
18 years.

19 A Okay.

20 Q In 1950 or thereabouts, will you agree with me 10:23AM  
21 that the growing of chickens was largely an  
22 extension of the desire of feed companies, like  
23 Purina, to sell feed?

24 A Well, I certainly wasn't -- well, I was around  
25 back then but I was not a trained economist. 10:23AM

1 Q But you read books?

2 A I read books that, you know, there were a lot  
3 of yard chickens and inconsistent quality and so  
4 forth, and the move to integration started largely  
5 by feed mills and feed or feed companies extending 10:24AM  
6 credit to growers and it rapidly grew.

7 Q And before the vertical integration move  
8 began, what were the risks on the person who was  
9 raising chickens; what risks did they assume?

10 A The usual production risk and price or market 10:24AM  
11 risk.

12 Q They assumed all of the risk associated with  
13 their enterprise, isn't that true, market  
14 production, health, all the things that go along  
15 with that? 10:24AM

16 A Right.

17 Q They owned the birds?

18 A Waste and all of that, yes.

19 Q Everything?

20 A Uh-huh. 10:24AM

21 Q Which meant that there was an opportunity for  
22 them to go broke?

23 A Yes.

24 Q All right. Now, fast forward 50 years.

25 A Uh-huh. 10:24AM

1 Q To about now --

2 A Okay.

3 Q -- with vertical integration being fully in  
4 place.

5 A Uh-huh. 10:25AM

6 Q What risk does the producer have now?

7 A The risks have changed. They haven't been  
8 eliminated. The grower obviously faces production  
9 risk. The grower faces risk from placement of

10 birds, when they will be placed, days between 10:25AM

11 flocks. The grower also faces price risk but a

12 different kind of price risk than they did in the

13 '40's and early '50's with a cash market. They also

14 face the risk of bankruptcy.

15 Q The risk to the producer, the farmer, has been 10:25AM

16 substantially lessened through vertical integration

17 than it was before vertical integration; isn't that

18 true?

19 A Risk broadly defined, I do not agree with

20 that. 10:25AM

21 Q Tell me why.

22 A I think I just did. Because the grower still

23 faces production risks. The grower faces price risk

24 through the tournament but does not mimic a

25 competitive market. They face gross income risk. 10:26AM



1 The integrator can extend or shorten days between  
2 flocks. If they extend it, that decreases their  
3 expected gross revenue and they still have all of  
4 the fixed costs in the facilities and so forth.

5 There is the risk of bankruptcy, part that comes  
6 about through a grower's own actions, mismanagement  
7 of a flock or whatever, but also the risk that can  
8 come about if the integrator decides to walk and not  
9 place chicks there or close down a complex before  
10 the full economic life of a house, before the full  
11 economic payback period has elapsed.

10:26AM

10:27AM

12 Q I'm going to get back into that area in just a  
13 second, but before I do that, tell me what risks the  
14 companies assume under the vertical integration  
15 business model.

10:27AM

16 A Going back to first to the grower, there are  
17 also some other risks with economic jargon. It's  
18 the pool that they happen to be in. You know, if a  
19 particular grower is in a pool with all really good  
20 managers, he or she will not do as well as if  
21 they're in a pool or tournament with poor managers.

10:27AM

22 The companies face some production risk. They are  
23 still in control of that. They face risk in terms  
24 of what I would generically call a wholesale market  
25 for chicken, chicken products or processed products

10:28AM

1 that have chicken or turkey or eggs.

2 Q I'd like to talk to you for a second about

3 risks that are real and not imagined. You talk a

4 lot in your affidavit and there's a lot of

5 discussion in the documents that you apparently

10:28AM

6 relied on about the consolidation of the industry

7 over the last 20 or 30 years; is that true; the

8 industry has consolidated in the last 20 to 30

9 years, has it not?

10 A Not as rapidly as cattle or hog industries.

10:28AM

11 Q But it still has consolidated, has it not?

12 A Somewhat.

13 Q And by that I mean, for Record purposes, that

14 a greater percentage of total birds produced is

15 being produced by a smaller number of companies than

10:29AM

16 20 or 30 years ago?

17 A Yes.

18 Q And companies that existed 20 and 30 years ago

19 no longer exist; that's what consolidation means,

20 doesn't it?

10:29AM

21 A Yes.

22 Q And, in fact, the chicken company graveyard is

23 littered with a lot of companies that have gone out

24 of existence in the last 20 to 30 years; isn't that

25 true?

10:29AM

1 A Well, I don't know what a lot means. I know  
2 the concentration ratio measured at the wholesale  
3 chicken product level and not at the grower level,  
4 that has increased somewhat over the years, like I  
5 say, not near as dramatically as cattle or hogs. 10:29AM

6 Q And those companies have largely gone out of  
7 existence because of the market risks that they have  
8 to bear on a daily basis; isn't that true?

9 A I do not know for sure why they went out of  
10 business because I don't have -- either have no 10:30AM  
11 information or no publicly available information on  
12 those.

13 Q Just from having --

14 A Many of those were private companies, so the  
15 financials were never reported. 10:30AM

16 Q Doctor, you've been an agricultural economist  
17 for -- since 19 -- the late 1960's, haven't you?

18 A PhD since '72 but, yes.

19 Q Okay, and you've spent a considerable amount  
20 of your professional time studying the poultry 10:30AM  
21 industry, haven't you, sir?

22 A The last 15 or 20 years.

23 Q And are you not willing to agree with me that  
24 a whole lot of companies that existed 20 or 30 years  
25 ago have gone out of existence because of the market 10:30AM

1 risks that the companies bear in a vertically  
2 integrated business model?

3 A I agree that a lot of companies have gone out  
4 of business, but I don't have factual information on  
5 the reason.

10:31AM

6 Q And the whole notion is under vertical  
7 integration, the companies bear the market risk to a  
8 much greater degree; they've taken that market risk  
9 away from individual family farm chicken producers  
10 having to bear that risk; isn't that true?

10:31AM

11 A It is not. They've changed the risk. They  
12 haven't taken it away.

13 Q Doctor, are you familiar with the changes in  
14 contracts between Simmons Foods and its growers that  
15 have occurred in the last five, six years?

10:32AM

16 A Not details. I've looked through some of the  
17 contracts, not carefully, but most of the  
18 integrators have changed their contracts somewhat,  
19 of the contracts I've seen. These are not publicly  
20 available either but --

10:32AM

21 Q I guarantee they're available through  
22 discovery in this lawsuit.

23 A Well, I have a lot of those, okay, maybe all  
24 of them, I don't know. I have not taken the Simmons  
25 contracts and gone through and made a specific list

10:32AM

1 of what has changed and what hasn't.

2 Q Do you know that they have changed largely  
3 from what's been known in the industry as a  
4 flock-to-flock agreement, which may or may not  
5 actually be a flock-to-flock agreement, to long-term  
6 guaranteed contracts between the integrator and the  
7 grower?

10:33AM

8 A I know some companies have done that in some  
9 complexes, but I don't know what you mean by long  
10 term.

10:33AM

11 Q Seven years?

12 A Seven years is a common number.

13 Q Uh-huh.

14 A I mean of this small set of contracts that are  
15 not flock to flock.

10:33AM

16 Q Arrangements whereby under the terms of the  
17 contract the company is guaranteeing a relationship  
18 with the grower for a period of at least seven  
19 years?

20 A Correct.

10:33AM

21 Q All right, and you also know that a typical  
22 modern, say, eight-house complex, 40 by 400's with a  
23 residential dwelling, will cost two and a half  
24 million dollars?

25 A I'm not sure it's quite that high but I'll go

10:34AM

1 with your number. It's ballpark.

2 Q And you know that lenders loan money to  
3 growers to build those kinds of complexes, don't  
4 they?

5 A Most of them in fact. 10:34AM

6 Q And you know that lenders make lending  
7 decisions based on the return on that investment,  
8 don't they, sir?

9 A With regard to the lenders, the bankers, there  
10 are two issues. One is that many of these loans are 10:34AM  
11 guaranteed by -- up to 90 percent. The other one  
12 is --

13 Q By whom? Not by the companies?

14 A By the government is what it amounts to.

15 Q Yes. 10:34AM

16 A The other -- could you restate your wording  
17 about the --

18 Q Lenders loan money to growers based on the  
19 lender's evaluation of the ability of the grower to  
20 repay the loan, don't they? 10:35AM

21 A Bankers look at these in terms of cash flow,  
22 and the contracts and the payment are generally  
23 structured so that the loan will cash flow, but just  
24 because a loan will cash flow doesn't mean that the  
25 grower is getting a competitive return for the 10:35AM

1 labor, the capital or the equity, the management and  
2 the risk. There are two different concepts there.  
3 The bankers look at, again, look at cash flow, which  
4 is related to economic return and profitability but  
5 it's not the same. So I have trouble with your 10:35AM  
6 specific wording about how bankers look at it.

7 Q What's wrong with looking at it from the  
8 standpoint of cash flow?

9 A That's how a banker should look at it but  
10 that's not how a grower should look at it. 10:36AM

11 Q Isn't that how you look at your life?

12 A Is cash -- well, I hope it cash flows, but I  
13 also look at it in terms of economic return. I  
14 don't have a long-term investment like this except  
15 in a house. 10:36AM

16 Q The truth of the matter is, Doctor, that there  
17 are hundreds and hundreds of chicken growers in  
18 northeast Oklahoma who pay the light bills, put food  
19 on the table, send Johnny to college, and repay the  
20 loans all based on -- and buy new pickup trucks all 10:36AM  
21 based on the cash flow notion of the money that  
22 comes their direction as a result of growing birds;  
23 isn't that right?

24 MR. RIGGS: Object to the form.

25 A That still doesn't mean that they're earning 10:36AM

1 -- over the full economic life of a house and the  
2 equipment, that does not necessarily mean that  
3 they're earning a competitive return for labor,  
4 management, equity and risk.

5 Q Do you think that those are decisions that are 10:37AM  
6 capable of being made by a grower before they decide  
7 whether they are going to become a grower or not?

8 A I can only put myself in that position. Even  
9 with an undergraduate degree in ag economics out of  
10 Oklahoma State, I'm not sure at the time I fully 10:37AM  
11 understood the complexities of economic returns over  
12 the life of a long-lived asset. They tend to look  
13 at it in terms of cash flow, and that's the way it's  
14 presented to them.

15 Q Well, I guess my question is, what's wrong 10:37AM  
16 with that; isn't that a decision for a particular  
17 individual to make as to whether or not they're  
18 going to get into the chicken growing business?

19 A They -- you know, my impression of the  
20 industry generally is the new growers get in knowing 10:38AM  
21 that while they're paying off those loans, that they  
22 will not have much left over for family living or  
23 the pickup or to send Johnny to school, but once the  
24 loans are paid off, then they anticipate making much  
25 more money, which doesn't always happen because of 10:38AM



1 mandated upgrades.

2 Q Even if that's true, and I'm not assuming that  
3 it is, but even if what you just said is true, isn't  
4 that still an individual decision for an individual  
5 human being to make as to whether they want to get  
6 into the chicken raising business?

10:38AM

7 A It's certainly an individual decision. I'm  
8 just saying if they base it solely on the cash flow  
9 projections for seven years or whatever, that it's  
10 not a complete economic evaluation.

10:39AM

11 Q So it's your position that these people are  
12 incapable of making that decision for themselves?

13 A No, that's not my position. The position is  
14 they don't have all the information they need out in  
15 front of them.

10:39AM

16 Q They're being lied to?

17 A I'm not saying they're being lied to.

18 Q What are you saying?

19 A With the cash flow statements I've seen, like  
20 with most of the budgets prepared by economists,  
21 budget is not actual. There are often a lot of  
22 costs that the grower incurs that are not shown, and  
23 to the extent those are not shown, I consider that a  
24 deceptive cash flow evaluation.

10:39AM

25 Q Well, if that were true -- well, strike that.

10:40AM

1 What is it they're not being shown?

2 A The new growers coming in -- the pro forma  
3 statements that I have seen, the cash flow type  
4 evaluations that the bankers do, they show the gross  
5 revenue that is expected and then they show the 10:40AM  
6 out-of-pocket costs that the grower has for, you  
7 know, cost of providing backup generators, roads,  
8 keep the roads graded, dead bird disposal. Overhead  
9 costs that a grower with eight houses would have, in  
10 my opinion those are not all shown or are under 10:41AM  
11 estimates.

12 Q By the bankers?

13 A I think the bankers take whatever is given to  
14 them.

15 Q Do you know of any instance where my client, 10:41AM  
16 Simmons Foods, has misled a potential new grower in  
17 the recruitment process?

18 A I have not seen any Simmons pro forma  
19 statements or the kind of represent -- written or  
20 verbal representations they have made to potential 10:41AM  
21 new growers.

22 Q On Page 5 of your CV in the middle of the page  
23 there is an article or it's called recent invited  
24 talks/seminars entitled Wayward Judges?  
25 Fact-finding, Rule of Reason and Meeting Competition 10:42AM

1 Interpretations.

2 A Yes.

3 Q What was the thesis of that speech?

4 A The thesis was essentially an article, which

5 has been published that's also shown here, that in 10:42AM

6 the Pickett opinion the Eleventh Circuit did not

7 weigh pro business benefits of captive supply

8 arrangements with any harm to the market, another

9 jury question, which they did not dispute, and

10 certainly from an economic standpoint, we would like 10:42AM

11 to see a balancing of pro business benefits with

12 harm to the market, and it's my understanding that

13 in the 90 some years of the rule of reason, that

14 it's also generally called for, this weighing

15 process, that Judge Strom and the Eleventh Circuit 10:43AM

16 did not do.

17 The other thesis is they accepted Tyson's

18 meeting the competition defense, which even the

19 Department of Justice has said is counter to

20 Sherman-Clayton Antitrust. 10:43AM

21 Q So the thesis of your speech was not only did

22 Judge Strom get it wrong but the Eleventh Circuit

23 got it wrong?

24 A Wayward Judges has a question mark after it.

25 I left it up to the people in attendance and said 10:43AM

1 you be the judge and the jury.

2 Q But you think they got it wrong?

3 A Just from a pure economic standpoint, the main

4 body of economic theory and issues like this, we

5 would like to see a weighing process to ascertain if 10:44AM

6 the pro business benefits were larger than or less

7 than harm to the market and the final decision based

8 on that, which is the concept of aggregate economic

9 efficiency, and I think they got the meeting the

10 competition defense wrong in my opinion. 10:44AM

11 Q On the next page, Page 6, there's a speech

12 given by you called Uncle Sam Is Sick, Very Sick.

13 A Uh-huh.

14 Q What was the thesis of that speech?

15 A The thesis of that has to do -- I'd have to go 10:44AM

16 back and look, but I think the thesis of that had to

17 do with the dual problem of growing an unsustainable

18 federal debt and growing an unsustainable trade

19 deficit for the United States and the likely future

20 problems that come about because of those dual 10:45AM

21 problems. One can be dealt with but together,

22 they're quite a challenge to deal with.

23 Q And two or three below that, you gave a speech

24 to the Auburn Rotary Club entitled Threats to the

25 Soul of Democracy. What was that about? 10:45AM

1 A That was just general about consolidation and  
2 the lobbying influence on the federal government.

3 Q By whom?

4 A Nobody in particular.

5 Q Consolidation of what? 10:46AM

6 A Consolidation of business generally.

7 Q In agriculture?

8 A Generally, and at what point does that become  
9 a problem.

10 Q At what point does it become a threat to the 10:46AM  
11 soul of democracy?

12 A Yes.

13 Q I'm looking at Page 8, about the third one  
14 down. Tell me what a networked sustainable farm is.

15 A Which one are you looking at? 10:46AM

16 Q Third one down on Page 8.

17 A Okay, third one. The purpose of this was  
18 simply to get the people there to thinking about  
19 alternative agricultural systems. You know, the  
20 1950 system is where you have a little Ford tractor 10:47AM  
21 and there's a cash market where you can go sell your  
22 commodities. The third one, the giant corporate  
23 farms and consolidation that we're moving towards,  
24 or if there's a way of having smaller and  
25 sustainable farms. Sustainable is a word that's 10:47AM

1 hard to define, but having those networked and if  
2 networked smaller farms can be more efficient than  
3 giant corporate farms or not. So it was to get  
4 people to thinking about issues.

5 Q Aren't those called co-ops?

10:47AM

6 A Some people call them co-ops; some call them  
7 new age co-ops, but the American concept of an  
8 agricultural cooperative with open membership hasn't  
9 worked out. So the new age co-ops are closed

10 membership, and then when you talk about network

10:48AM

11 sustainable farms, there's a whole body of business  
12 theory dealing with networking and how you loosely  
13 but efficiently tie small groups or individuals  
14 together.

15 Q Well, you are a professor of public policy.

10:48AM

16 Is it your view that public policy in the United  
17 States ought to be supportive of something called  
18 networked sustainable farms as opposed to, quote,  
19 giant corporate farms, end quote?

20 A In my policy work on behalf of Auburn

10:48AM

21 University, I try to identify who gains and who  
22 loses from different policy alternatives and have a  
23 large scale model of the whole ag sector that has  
24 been used for doing that kind of aggregate policy  
25 analysis.

10:49AM

1 Q So what's the answer to my question?

2 A So it's not at all clear to me that networked  
3 sustainable farms can be more efficient. Certainly  
4 there's a growth in organic production and pastured  
5 poultry and that type of thing.

10:49AM

6 Q Right.

7 A But it may be transitory and it may not.

8 Q In terms of public policy and social policy,  
9 though, from a consumer standpoint, I wouldn't be  
10 able to go to Kroger's and buy a whole chicken for  
11 \$3.50 if we only had networked sustainable farms  
12 producing chickens; isn't that right?

10:49AM

13 A We don't know because we haven't had networked  
14 sustainable farms using the more modern way of  
15 networking with all the computer technology we have  
16 and so forth. We haven't really seen that. The  
17 so-called sustainable farms, the small ones that are  
18 out there and surviving have found little niches,  
19 but to answer your question directly, those  
20 producing pastured poultry and so forth cannot  
21 generally compete cost-wise with the vertically  
22 integrated commercial operations.

10:50AM

10:50AM

23 Q And then on Page 9, in 1999 you gave a speech  
24 entitled Frankenstein Foods, Frankenstein Firms?

25 A Yes.

10:51AM

1 Q And what was the thesis of that?

2 A At the time there was a lot of press about  
3 Frankenstein Foods, and I don't know who started  
4 that. It's since died out. So this was a catchy  
5 title to try to capture attendees' attention. The 10:51AM  
6 thesis of that is that, you know, in economics and  
7 business we tend to talk a lot about a single  
8 well-defined firm that has well-defined management  
9 goals, and we're evolving to not just with  
10 consolidation but partial ownership, joint ventures, 10:51AM  
11 some interlocking directorates and so forth, and  
12 those are difficult to understand. May be good, may  
13 be bad.

14 Q Has nothing to do with chickens?

15 A Not really, no. 10:52AM

16 Q Strike all that then.

17 MR. RIGGS: You struck first, John.

18 Q Let me turn to Page 37 and let's talk about  
19 your expert witness activity.

20 A Okay. 10:52AM

21 Q Actually I think there's another page that  
22 talks about the last four years. That's Page 39.

23 A You want me to go to 39?

24 Q Yes, sir, testimony of the last four years.

25 A Okay. 10:52AM



1 Q Wheeler against Pilgrim's Pride, what was that  
2 case about?

3 A Packers and stockyard case, alleging  
4 violations of Section 202 of the Packers and  
5 Stockyard Act.

10:53AM

6 Q That was a grower against Pilgrim's Pride?

7 A It was a set of growers and they requested  
8 class action. I don't know all of the legal  
9 terminology.

10 Q Okay. Was the class certified?

10:53AM

11 A I'm trying to recall. No, it wasn't, but I  
12 don't know if -- I can't recall if plaintiff  
13 attorneys backed off of that or the reason but that  
14 one, it's my understanding it was not certified as a  
15 class.

10:53AM

16 Q Okay, and the allegation had to do with  
17 antitrust issues?

18 A Wheeler versus Pilgrim's Pride started out as  
19 Packers and Stockyard Act only. Plaintiff attorneys  
20 decided to bring antitrust and Tyson in, at which  
21 point I said I don't have time or interest in all of  
22 this, and my role in the antitrust part has been  
23 very small, really just definition of the market for  
24 grower services.

10:54AM

25 Q Okay. S-C-H-A-U-E-R?

10:54AM

1 A Schauer.

2 Q Schauer against Cargill, what was that case  
3 about?

4 A It's about Cargill terminating all growers in  
5 the Gonzales complex. 10:54AM

6 Q And what was your role in that case?

7 A This was under Texas state law. My role was  
8 as an expert witness, the economist.

9 Q And you provided what kind of testimony; what  
10 were your opinions generally? 10:55AM

11 A My opinions dealt with the economic payback  
12 period for a house or new house equipment and  
13 upgrades.

14 Q Pickett we've already discussed?

15 A Uh-huh. 10:55AM

16 Q And then Been against OK Industries, what was  
17 your role in that case?

18 A Again, the economist expert.

19 Q And that case was won by OK, wasn't it?

20 A No. That case started in '01, and I don't 10:55AM  
21 remember the exact dates, but after my deposition in  
22 '04 and a brief testimony at a class certification  
23 hearing, it was partially settled. Some of the  
24 allegations were dropped and partially settled, but  
25 plaintiffs were allowed to appeal to the Tenth 10:56AM

1 Circuit over interpretation of the Packers and  
2 Stockyard Act, and it stayed in the appellate court  
3 for two or two and a half years and came out a few  
4 months ago out of appellate court. So the class was  
5 certified and the Packers and Stockyard part of that 10:56AM  
6 is once again active.

7 Q Well, the decision has been made by the Tenth  
8 Circuit, hasn't it?

9 A Yes.

10 Q And OK won that case, didn't they? 10:56AM

11 A No. I'm saying that, no, it's not over.  
12 Parts of it -- I'm not sure of the legal  
13 terminology. I'm an economist.

14 Q Have you read the Tenth Circuit decision?

15 A Yes, and it's not over. 10:57AM

16 Q You may have read something I didn't read.

17 A Well, I know I was deposed a couple of days  
18 before Christmas.

19 Q Okay. Oh, I know what I was going to ask you.

20 Plaintiffs in that case were represented by Crowe & 10:57AM  
21 Dunlevy out of Oklahoma City?

22 A Correct.

23 Q And Miles Tolbert was a member of the firm at  
24 the time the case was started; is that true?

25 A Yes. 10:57AM

1 Q And is that how you got to know Mr. Tolbert?

2 A As far as I know, I have only seen him once,  
3 and right after this case was started, I gave a CLE  
4 talk, and Crowe & Dunlevy attorneys, Harry Woods and  
5 a few others, took me to dinner, and Miles Tolbert  
6 was there, and as far as I know, that's the only  
7 time I have -- that's the only contact I've had with  
8 him.

10:58AM

9 Q I'm curious to know how you found your way to  
10 counsel in this case.

10:58AM

11 A They'll have to answer that.

12 Q Did they call you?

13 A They called me.

14 Q And was that after you and Mr. Tolbert --

15 A When I met Tolbert was in '01 or '02. So,  
16 yes, they didn't contact -- plaintiff attorneys in  
17 this case did not contact me until roughly a year  
18 ago.

10:58AM

19 Q When they did contact you, what did they tell  
20 you they wanted you to do?

10:59AM

21 A To -- just talked in broad terms, not really  
22 specific at the time, but to describe the industry  
23 and then possibly at some point look at the unjust  
24 enrichment issue and at some point possibly  
25 calculate damages.

10:59AM

1 Q And is that -- has that work culminated in  
2 your affidavit?

3 A No. For the affidavit I was simply asked to  
4 describe the industry and take a preliminary look at  
5 the cost of hauling litter out of the watershed. 10:59AM

6 Q And that's all?

7 A That's all.

8 MR. ELROD: David, let me just say this on  
9 the Record, since we're focused on the PI hearing, I  
10 hope it's your position that we're going to have 11:00AM  
11 another opportunity to depose this witness on the  
12 broader issues in the case.

13 MR. RIGGS: Yes. John, that makes it easy  
14 for me because I was worried about maybe being  
15 confronted with having to instruct him not to answer 11:00AM  
16 questions about those other opinions outside of this  
17 affidavit. With that understanding, obviously,  
18 because he's not due to disclose those opinions  
19 until April 1st, I guess, so -- and there's a  
20 discovery period after that, so. 11:00AM

21 MR. ELROD: I can't guarantee you that  
22 other lawyers in this room won't try to ask those  
23 questions, but I don't intend to. We don't have  
24 enough time today, and we're all focused on the PI  
25 issue. 11:00AM

1 MR. RIGGS: We're together on that. I hope  
2 everybody else is.

3 Q So, I'm sorry, what were -- the two things for  
4 the affidavit were describe the industry?

5 A Describe the industry and a preliminary 11:00AM  
6 calculation, just broad parameters on the unit cost  
7 of hauling litter out of the watershed.

8 Q Now, you answered that in a way that concerns  
9 me when you use the word preliminary. Are you not  
10 ready to give your final opinions in this at the PI 11:01AM  
11 hearing?

12 A I'm ready to give my estimate of the cost of  
13 hauling litter out of the watershed, which is based  
14 on the University of Arkansas study.

15 Q Well, how close to reality do you think your 11:01AM  
16 estimate is?

17 A It's consistent with other studies I've seen  
18 on cost of hauling litter, studies by ag economists  
19 at University of Arkansas and Oklahoma State and  
20 some Oklahoma documents dealing with the litter 11:02AM  
21 market. So that number is consistent with these  
22 others. It is not a full-blown damage calculation.

23 Q Has the -- to your knowledge has the  
24 University of Arkansas ever actively hauled litter  
25 out of the watershed? 11:02AM

1 A Has the University of Arkansas?

2 Q Yes.

3 A The university itself hauled litter out?

4 Q Yes, uh-huh.

5 A I don't know.

11:02AM

6 Q And to your knowledge has Oklahoma State  
7 University ever hauled any litter out of the  
8 watershed?

9 A I don't know.

10 Q And who has actively actually hauled litter  
11 out of the watershed on any kind of a substantial  
12 basis?

11:02AM

13 A I don't have all of the details on the hauling  
14 of litter.

15 Q Well, I'm trying to --

11:03AM

16 A I know there's the BMP, Inc., effort --

17 Q All right.

18 A -- underway and some -- an Oklahoma effort at  
19 establishing a litter market and so forth.

20 Q And what about defendant, George's,  
21 Incorporated; do you know whether it's been actively  
22 hauling litter out of the watershed?

11:03AM

23 A No, not aware.

24 Q So if we want to separate the world into  
25 theory and reality, you would agree with me that

11:03AM

1 reality would be BMPs, Inc., and George's; is that  
2 right?

3 MR. RIGGS: Object to the form.

4 A Not the -- the reality of hauling the litter  
5 out, there are related issues of getting it out of 11:04AM  
6 the house and storing it and so forth that may or  
7 may not be a part of the George's calculation.

8 Q Doctor, I really do try not to interrupt  
9 witnesses and I try to be courteous and -- but my  
10 question was, that if you would divide the world 11:04AM  
11 into people who talk about theory and people who  
12 actually do, you're basing your opinion on people  
13 who are discussing theory as opposed to people who  
14 actually do; isn't that correct?

15 MR. RIGGS: Object to the form. 11:04AM

16 A That is not correct. It's based on empirical  
17 studies of litter and litter hauling and not on  
18 textbook economic theory.

19 Q Well, Messrs. Tabler and Berry -- and they're  
20 at the University of Arkansas? 11:04AM

21 A Correct.

22 Q Do you know whether they've ever hauled litter  
23 out of the Illinois River watershed?

24 A I do not know.

25 Q Based on what you've read and what you know 11:05AM



1 and having lived on the earth as long as you have,  
2 isn't it true that hauling litter out of the  
3 Illinois River watershed has never been accomplished  
4 on any kind of a substantial basis until BMPs  
5 started doing it?

11:05AM

6 A Well, I don't know the true extent of BMPs'  
7 involvement versus other operations hauling it out,  
8 but --

9 Q How many tons did they haul out in 2007?

10 A I don't know.

11:05AM

11 Q Why wouldn't it be important for you to know?

12 A Because I have not been asked to do an  
13 aggregate damage calculation or to estimate the  
14 aggregate litter or waste production in the  
15 watershed or to estimate how much of it moved out of  
16 the watershed. It was my understanding that others  
17 involved with the project would do that, and in  
18 subsequent evaluations I may be asked to do that  
19 aggregate-type calculation, but for purposes of this  
20 preliminary injunction, I've not been asked to do  
21 that.

11:06AM

22 Q What is your understanding of who else is  
23 supposed to do it for purposes of this PI?

24 A I don't know for purposes of this PI.

25 Q You just testified that it was your

11:06AM

1 understanding that others might be doing this.

2 A In this litigation broadly defined.

3 Q Who are those others?

4 A I can't identify them by name.

5 Q Can you identify them by category? 11:06AM

6 A Primarily scientists and those involved in  
7 identifying the active poultry houses and the size  
8 of those houses or how many birds or how many total  
9 pounds are grown in the watershed.

10 Q But nobody's told you who those people are? 11:07AM

11 A They have. I just don't remember the names.

12 Q And you're doing your work without having seen  
13 their work product?

14 A I have seen some that they are working on.

15 This was in early October. They had an all-day 11:07AM  
16 meeting I was supposed to go to, but my mother was  
17 in the hospital in Oklahoma City critically ill, and  
18 I ran in for about an hour and left and, you know,  
19 didn't --

20 Q And when was that meeting? 11:07AM

21 A I think it was early October, late September  
22 or early October.

23 Q So it's true -- I think we touched upon this  
24 earlier, but it's true that you have formed your  
25 opinions in this case without knowing or basing your 11:08AM

1 views on the work that's being done by others in  
2 this case?

3 A I have not come up with an aggregate damage  
4 estimate, have not been asked to. I simply looked  
5 at the per pound cost of hauling litter out and put 11:08AM  
6 it on a per pound or per bird basis and not the  
7 aggregate number.

8 Q Have you calculated -- have you used in your  
9 calculations the cost to landfill chicken litter?

10 A No. 11:08AM

11 Q Nobody asked you to do that?

12 A No.

13 Q Do you know that a chicken litter is a  
14 hazardous substance, that it can't be transported,  
15 it's got to be landfilled? 11:08AM

16 A I didn't know it was a hazardous substance,  
17 going back to what we discussed earlier.

18 Q Okay. Nobody from the State of Oklahoma has  
19 told you that it's a hazardous substance?

20 A I don't recall anybody saying that. 11:09AM

21 MR. ELROD: Okay. Who needs affidavits?  
22 Anybody? I've got plenty here.

23 MR. RIGGS: Copies of his affidavit?

24 MR. BULLOCK: I'll take a copy, John, just  
25 not to disappoint your staff. 11:09AM

1 MR. SANDERS: John, I'll take one.

2 A This is my own.

3 Q It's now called Exhibit 1 Taylor, but you are  
4 welcome to look at whatever one you want to.

5 A Okay. 11:10AM

6 MR. BULLOCK: It's Exhibit 1, John, rather  
7 than the 5 that's on the one I got?

8 MR. ELROD: Yes, yes, sir.

9 MR. BULLOCK: Thank you.

10 MR. RIGGS: It was Exhibit 5 to the 11:10AM  
11 pleading we filed.

12 MR. ELROD: Right.

13 MR. BULLOCK: Oh.

14 Q In Paragraph 5 you say that early in your  
15 career you conducted substantive research on plant 11:10AM  
16 nutrients as water pollutants. Would you tell me  
17 about that, please?

18 A When I graduated from Mizzou, I went to  
19 Illinois, University of Illinois on a post-doctoral  
20 position that was full time on a very large grant 11:10AM  
21 project funded by the Rockefeller Foundation with  
22 the title Plant Nutrients As Water Pollutants and  
23 worked on that two years, then got a tenured track  
24 position and continued some of that work after that.

25 Q During your subsequent career, have you been 11:11AM

1 involved in any other way with the actual science of  
2 agronomy as opposed to agricultural economics?

3 A I work to some extent with agronomists and  
4 work extensively with a plant pathologist. So I  
5 continue to interact with them and do research in 11:11AM  
6 some areas.

7 Q Do you consider yourself to have expertise in  
8 the area of agronomy?

9 A I am not an agronomist. I had some training  
10 in college in agronomy, and I have done as part of 11:11AM  
11 that project considerable work on the economics of  
12 fertilization, but I'm not an agronomist.

13 Q Okay.

14 MR. ELROD: We probably need to take a  
15 break. 11:12AM

16 VIDEOGRAPHER: We're now off the Record.  
17 The time is 11:11 a.m.

18 (Following a short recess at 11:12  
19 a.m., proceedings continued on the Record at 11:25  
20 a.m.) 11:23AM

21 VIDEOGRAPHER: We are back on the Record.  
22 The time is 11:25 p.m.

23 Q Doctor, I'm looking at Paragraph 6 of your  
24 affidavit on Page 4, the last couple of sentences of  
25 that paragraph, and it says, including the costs of 11:25AM

1 safely removing poultry waste. What's this notion  
2 of safely removing it?

3 A Well, it goes to the allegations of the case,  
4 that there's the issue with bacteria and phosphorus  
5 in particular, and you wouldn't want to remove it 11:26AM  
6 and cause the same problem in another area.

7 Q But I thought that the -- so are you telling  
8 me that as we move down through the affidavit and  
9 your methodology, that factored into the cost is  
10 something called safety? 11:26AM

11 A No. As I said earlier, I looked at the unit  
12 cost of transporting it out of the watershed for  
13 purposes of the preliminary injunction, and that's  
14 it.

15 Q And you've also been asked to include the 11:26AM  
16 issue of dead birds in your numbers?

17 A I inserted that just to clarify that waste  
18 meant feces and used litter and sometimes dead  
19 birds.

20 Q So you're transporting dead birds out of the 11:27AM  
21 watershed also?

22 A I'm not transporting anything out of the  
23 watershed but --

24 Q Metaphorically?

25 A Metaphorically that's possible. That's not 11:27AM

1 the way that they're supposed to be disposed of now  
2 but, you know, some may have been composted. So in  
3 a sense, they could be transported out.

4 Q But my question is, you are including in your  
5 calculation the cost of transporting dead birds out 11:27AM  
6 of the watershed, including the chicken litter  
7 that's pulled out of chicken houses?

8 A I'm -- for purposes of this affidavit, simply  
9 looked at the cost of transporting generic waste,  
10 whatever is in there. 11:28AM

11 Q In the houses?

12 A Whatever has to be transported out of the  
13 watershed, which --

14 Q Well, you know that dead birds are composted?

15 A I don't know that all of them are. Some of 11:28AM  
16 them are put in freezers and there are other ways of  
17 dealing with them but, yes, some of them are  
18 composted.

19 Q Is it your testimony that freezers are still  
20 used in the watershed? 11:28AM

21 A I don't know about the watershed.

22 Q But we're talking about this watershed, aren't  
23 we?

24 A Okay, right.

25 Q What -- how are dead birds disposed of in this 11:28AM

1 watershed?

2 A I have not looked at the details of that.

3 Q Well, how can you give an opinion on the cost  
4 of transporting them out if you don't know what's  
5 done with them?

11:29AM

6 A Again, I included this just intending that  
7 this would mean that I'm talking about generic  
8 waste, whatever is there, and hauling it out.

9 Q In Paragraph 7 you discuss the vertical  
10 integration of the poultry industry and you assert  
11 that it's the most vertically integrated of all  
12 major agricultural industries?

11:29AM

13 A Yes.

14 Q Some people I've talked to recently took  
15 offense to that notion because they said sugar beets  
16 is the most vertically integrated. What do you know  
17 about sugar beets?

11:29AM

18 A When I wrote this, I meant of major  
19 agricultural commodities, not some of the specialty  
20 commodities. I know there's a fair amount of  
21 vertical integration with sugar beets and --

11:30AM

22 Q You talking about the animal -- the meat  
23 industry?

24 A Especially the meat industry.

25 Q Okay.

11:30AM



1 A But also major crops, too.

2 Q The cattle industry is not vertically  
3 integrated?

4 A The cattle -- what the cattlemen call mama  
5 cows, those operations are definitely not vertically 11:30AM  
6 integrated. Part of the cattle feeding, cattle  
7 slaughter industry is partially integrated through  
8 the captive supply arrangements I've already talked  
9 about. A very small part, under 5 percent of cattle  
10 feed lot operations, are owned by the Meat Packers. 11:31AM

11 Q So the answer to my question, the cattle  
12 industry is not vertically integrated?

13 A It is partially integrated.

14 Q And will you agree with me that the vertical  
15 integration of the poultry industry versus the 11:31AM  
16 partial integration of the cattle business, a lot of  
17 that has to do with the nature of the animal; isn't  
18 that true?

19 A It has to do with the nature of the animal,  
20 capital cost and a whole host of factors. 11:31AM

21 Q And will you agree with me, Doctor, that the  
22 area of northeast Oklahoma and northwest Arkansas  
23 that is contained within the IRW has some of the  
24 largest cattle numbers of any counties in the United  
25 States? 11:32AM

1 A I know there's a large number of cattle. I  
2 don't know if it ranks up near the top nationally.

3 Q And will you agree with me that virtually all  
4 of the cattle produced in the IRW are cow-calf  
5 operations? 11:32AM

6 A As far as I know.

7 Q Have you ever looked at the average herd size  
8 in the IRW?

9 A Not for the IRW.

10 Q What about for northwest Arkansas, northeast 11:32AM  
11 Oklahoma in general?

12 A I would be surprised if it was over 100 head  
13 on average.

14 Q The truth of the matter is, the cattle  
15 industry in this part of the world is made up of 11:32AM  
16 small producers large in number; is that true?

17 A Correct. The cow-calf operations are made up  
18 of a large number of small producers. Cattle  
19 feeding is a different matter.

20 Q I understand that. There's no cattle feeding 11:33AM  
21 operations to speak of in the IRW, though, is there?

22 A No, not that I'm aware of.

23 Q So it would be true then that in the IRW, if  
24 the attorney general wanted to sue the cattle  
25 industry, he would have to sue thousands of people; 11:33AM

1 isn't that true?

2 A I'm not an attorney. I assume that's true.

3 Q Okay. We've touched upon this earlier, and I

4 really don't want to get into it in great depth, but

5 my question to you is, in regard to Paragraph 7 of

11:34AM

6 the vertical integration of the poultry industry,

7 how would you structure it in your perfect world?

8 A Well, I don't have a perfect world, and as I

9 said before, I don't come at this from an

10 ideological position, but I think -- well, I know,

11:34AM

11 as I've said before, I would prefer to see a balance

12 of power in contracting between the growers and the

13 integrators. I would be equally concerned if the

14 growers were dictating everything to the integrator,

15 and I might tinker with the tournament a little bit,

11:34AM

16 but no major changes for commercial poultry

17 operations.

18 Q And when you call -- when you use the word

19 tournament in the economic sense, you're talking

20 about the fact that growers settle their flocks

11:35AM

21 against their peers who deliver birds to the

22 processor during the same week?

23 A Correct.

24 Q And the pay that a grower receives is a peer

25 comparison during that week of feed conversion ratio

11:35AM

1 of that farmer versus all the other flocks that  
2 settle that week with a base pay; is that right?

3 A I don't know what you mean by pure.

4 Q I think I meant to say peer.

5 A Okay. 11:35AM

6 Q I'm sorry.

7 A It is a calculation -- specifics of the  
8 tournament differs from company to company and even  
9 from complex to complex for a given company, but  
10 it's generally based on feed efficiency. 11:36AM

11 Q What's the unfairness of that methodology?

12 A Unfairness comes in with the imbalance of  
13 power. The -- I would prefer to see the tournament  
14 better mimic a competitive market. At present it  
15 does not mimic a competitive market -- 11:36AM

16 Q So how should --

17 A -- generally.

18 Q How should it be changed?

19 A Well, all of this is a matter of risk and  
20 rewards, and as risks go up, you expect the reward 11:36AM  
21 to go up with it, and short-term contracts are  
22 incredibly risky for growers with such a long  
23 economic payback period. I'm saying I could tinker  
24 with the tournament a little bit, but the key  
25 feature of the tournament that differs from a 11:37AM

1 competitive market is that in a competitive market,  
2 if an individual grower has a bad flock, then that  
3 grower gets the same unit price as all of the other  
4 growers selling into the market. In the tournament,  
5 if a single grower has a bad flock, they have lower  
6 production but they also get a lower unit price. So  
7 price and quantity go down, and I think that kind of  
8 magnifies the effect of bad decisions, either by the  
9 integrator or the grower.

11:37AM

10 Q But isn't that whole notion to encourage good  
11 animal husbandry and efficiencies on the part of the  
12 grower?

11:37AM

13 A It's to give growers an economic incentive to  
14 be good growers. The word efficiency that you used  
15 has many different meanings. In the context of the  
16 poultry industry, when people say it's efficient,  
17 they're usually looking at feed conversions, but in  
18 the world of economics, aggregate economics where it  
19 fits a related but a different concept.

11:38AM

20 Q Well, you'll agree with me that year in, year  
21 out about 60 percent of the cost of the raising a  
22 bird is the feed cost?

11:38AM

23 A Sounds about right.

24 Q And you'll agree with me that if birds are  
25 going to be raised efficiently, that the conversion

11:38AM

1 of that -- those carbohydrates into protein in an  
2 efficient manner is important not only to the  
3 company but to the grower?

4 A With the qualification I mentioned previously,  
5 that feed efficiency is not -- does not necessarily 11:39AM  
6 translate into aggregate economic efficiency.

7 Q If 60 percent of the cost of raising a bird is  
8 the feed that goes in its mouth, why would not the  
9 feed conversion of the carbohydrates to protein  
10 directly affect the bottom line of the integrator? 11:39AM

11 A It affects the bottom line of the integrator,  
12 but to get into all of the details of the  
13 tournament, the incentives the integrator has under  
14 most tournaments for placing birds are not aligned  
15 perfectly with grower incentives, and that can lead 11:39AM  
16 to stress in the relationship and may even lead to  
17 aggregate economic inefficiency.

18 Q Let's move to Paragraph 8. You know, before  
19 we do that, my mind is wandering, quite frankly, but  
20 it picked up on the very end of your last answer. 11:40AM  
21 How can that possibly contribute to inefficiencies;  
22 isn't that what you just said?

23 A The integrators -- given most tournaments, the  
24 integrator's economic incentive is to produce a bird  
25 at minimum average cost, and that leads to the 11:40AM

1 integrator making density decisions and also  
2 days-out decisions, but the grower is sitting there  
3 with a fixed facility, and so the economic incentive  
4 for a grower might be higher stocking densities than  
5 it is for the integrator, and that can translate 11:41AM  
6 into aggregate economic inefficiency.

7 Q Paragraph 8, you say that the integrators make  
8 all decisions, and then you go on to describe what  
9 aspects of the growing of birds integrators make,  
10 the decisions they make; correct? 11:41AM

11 A Yes.

12 Q Do you find something nefarious about that  
13 notion?

14 A What do you mean?

15 Q Evil? 11:42AM

16 A What do you mean by nefarious?

17 Q Do you find something morally wrong about the  
18 notion that the integrators make these kinds of  
19 decisions?

20 A I'm not looking at any of this from a moral 11:42AM  
21 standpoint. I'm looking at it in terms of aggregate  
22 economics.

23 Q Do the growers -- I mean do the integrators  
24 also make any decisions regarding the disposition of  
25 chicken litter? 11:42AM

1 A You've already maintained that Simmons hauls  
2 some out.

3 Q No, sir, I'm not.

4 A Okay. I misunderstood you then.

5 Q I mean they may but I'm not maintaining that 11:42AM  
6 at this point.

7 A State the question again, please.

8 Q Do the companies make decisions regarding the  
9 disposition of chicken litter?

10 A Generally the contracts state that the grower 11:43AM  
11 is responsible for that. Recent contracts state  
12 they have to follow all applicable state laws or  
13 something to that effect.

14 Q And you'll agree with me that the regulatory  
15 scheme in the state of Oklahoma is directed at the 11:43AM  
16 growers and not at the integrators in terms of the  
17 disposition of litter; isn't that true?

18 A From a -- I don't know from a legal  
19 standpoint.

20 Q Do you know what the regulatory scheme in 11:43AM  
21 Oklahoma is in regard to the disposition of litter?

22 A Basically it's the CAFO regulations and the  
23 best management practices.

24 Q Have you looked at what the regulatory scheme  
25 is in Oklahoma for the -- regarding the disposition 11:43AM



1 of litter?

2 A I've taken a superficial look at it.

3 Q Will you agree with that, that that regulatory

4 scheme does not require that all the litter

5 generated in the IRW be transported out of the IRW?

11:44AM

6 MR. RIGGS: Object to the form.

7 A As I understand it, it deals just with an

8 individual grower's use of litter and where it is

9 applied.

10 Q And what is your understanding of who gets to

11:44AM

11 make the rules, the Oklahoma legislature or the

12 Oklahoma Attorney General?

13 MR. RIGGS: Object to the form.

14 A I don't know in that case about involvement of

15 various state agencies, federal EPA, cooperative

11:44AM

16 extension. Generally all of those are involved in

17 some way or another of formulation of state CAFO

18 regulations.

19 Q Well, returning to the disposition of litter

20 issue that we're talking about, what control does my

11:45AM

21 client, Simmons Foods, exercise over the disposition

22 of chicken litter other than through its contract

23 terms requiring its growers to follow the law?

24 A They have put the burden of that on the

25 grower.

11:45AM

1 Q Would it also be fair to say that the grower  
2 has accepted the burden of doing that?

3 A On individual tracts of land, yes, but in the  
4 aggregate, that's a legal issue.

5 Q You'll agree with me that this lawsuit is 11:45AM  
6 about chicken litter; it's not about growing  
7 chickens; isn't that true?

8 A As far as I know.

9 Q Okay. Somewhere in your affidavit you talk  
10 about field service techs for the company. You 11:46AM  
11 understand what that system is all about?

12 A Yes.

13 Q Providing advice?

14 A (Witness nods head up and down).

15 Q Will you agree with me there's 168 hours in a 11:46AM  
16 week? Surely we can agree on that.

17 A Okay.

18 Q And do you know how many of those hours it  
19 would be typical for a field service tech to  
20 actually appear at a grower's farm? 11:46AM

21 A A couple of hours once a week would be  
22 typical.

23 Q So it would be typical then that somewhere  
24 around maybe 1 percent of the entire week or less  
25 the representative of Simmons Foods would actually 11:46AM

1 be physically on the farm of one of its growers?

2 A In terms of physically on the farm, some of  
3 the more modern equipment is set up so that the  
4 houses can be monitored and it could be monitored  
5 by -- if it's set up that way, monitored by the  
6 representative sitting at the desk in his office.

11:47AM

7 Q That's pretty extraordinary, isn't it, what's  
8 happened in the last ten years?

9 A The whole computerized tunnel ventilation  
10 system?

11:47AM

11 Q Yeah. You agree with me that that's pretty  
12 extraordinary?

13 A In what sense?

14 Q In the sense of the advancement in the way  
15 birds are raised.

11:47AM

16 A It's certainly an advancement, and there are  
17 production advantages for growing under the new high  
18 tech tunnel ventilation system. It's pretty small  
19 compared to conventional and, of course, the tunnel  
20 system is much more expensive, too, but, you know,  
21 technologically it fits in with everything else in  
22 society.

11:47AM

23 Q Do you know that my client, Simmons, has now  
24 gone to 100 percent tunnel ventilation houses?

25 A I didn't know that, but I'm not surprised.

11:48AM

1 Q And do you know --

2 A They're all moving that direction.

3 Q And do you know that as a result of that, it  
4 has offered long-term contracts with greater grower  
5 pay?

11:48AM

6 A Most of the contracts nationally have -- now  
7 have split pay and a different and higher pay for  
8 birds grown in a tunnel ventilation house compared  
9 to a conventional house.

10 MR. ELROD: If we're going to beat the  
11 lunch crowd, we need to break right now.

11:48AM

12 MR. RIGGS: Sure.

13 VIDEOGRAPHER: We're now off the Record.  
14 The time is now 11:48 a.m.

15 (Following a lunch recess at 11:48  
16 a.m., proceedings continued on the Record at 1:13  
17 p.m.)

11:48AM

18 VIDEOGRAPHER: We are back on the Record.  
19 The time is 1:13 p.m.

20 Q Doctor, I'm on Page 5 of your affidavit.

01:13PM

21 Paragraph 9, third line down from the top, it says  
22 beginning with that sentence, integrator  
23 representatives typically visit each grow-out house  
24 at least weekly to check on and supervise the  
25 grower's care of flocks and cleanout of used litter,

01:14PM

1 waste and dead birds. What's the basis of your  
2 statement that the integrator representatives check  
3 on the cleanout of used litter, waste and dead  
4 birds?

5 A It's my understanding that they do that for 01:14PM  
6 disease control and other purposes. So they do  
7 monitor the litter and so forth.

8 Q Exactly what is it that you believe that  
9 growers -- that company representatives do in regard  
10 to the litter cleanout? 01:14PM

11 A It's my understanding that generally the  
12 integrator makes representation -- I mean makes  
13 recommendations or in some cases requires the grower  
14 to clean out a house in between particular flocks.

15 Q To clean out houses in between particular 01:15PM  
16 flocks?

17 A Right, and move litter into the house.

18 Q Like every five and a half weeks?

19 A I don't know of any that frequently. It's  
20 usually every year or a couple of years depending. 01:15PM

21 Q So you misspoke when you said between flocks?  
22 I don't mean in your affidavit. The testimony you  
23 just gave was that they required cleanout between  
24 flocks.

25 A Well, that is the opportunity -- the time at 01:15PM

1 which they can clean out the house, and that's when  
2 it typically occurs is between flocks but not  
3 between every flock.

4 Q And what do you base your understanding on,  
5 that the companies require an annual cleanout, if 01:16PM  
6 that is your testimony?

7 A I'm not saying they require it on an annual  
8 basis, but they generally make recommendations, if  
9 not requirements, on specifically when it is cleaned  
10 out and when new litter is put in. 01:16PM

11 Q Really, and why do you believe that, because  
12 you read it someplace or seen it?

13 A I've read it and talking to growers and  
14 others.

15 Q Okay. You understood that dead birds are 01:16PM  
16 picked up on a daily basis in the house by the  
17 farmer and composted?

18 A Yes, generally.

19 Q So as I understand your testimony, the company  
20 determines when a grower will clean out the grower's 01:17PM  
21 chicken house?

22 A That is my understanding.

23 Q Paragraph 12, you state that because there's  
24 no open market for poultry ready for processing,  
25 there is no economically viable alternative for 01:17PM

1 commercial non-specialty growers who wish to be  
2 independent from integrators. Do those people  
3 exist?

4 A What do you mean? Do those people, you are  
5 referring to growers or --

01:18PM

6 Q Not -- commercial non-specialty growers who  
7 wish to be independent from integrators, do those  
8 people exist?

9 A There are certainly people out there  
10 interested in getting involved in agriculture at the  
11 production level if they think they can make money.

01:18PM

12 Q Let me get specific. I'm going to hold you to  
13 this.

14 A Okay.

15 Q Is there somebody in existence called a  
16 commercial non-specialty grower who wishes to be  
17 independent from integrators?

01:18PM

18 A There are potential growers who wish to be  
19 independent from integrators.

20 Q Who -- can you name me names or tell me where  
21 I can find these people?

01:18PM

22 A No. There's no waiting list as there is for  
23 people who want to become contract growers. I know  
24 of no waiting list, but certainly when I go around  
25 to ag meetings, there are people interested in

01:19PM

1 getting involved in agriculture or remaining  
2 involved in agriculture and knowing -- wanting to  
3 know how they might make money.

4 Q So is it true that the sole basis for your  
5 testimony in this regard is having talked to people? 01:19PM

6 A Yes, just knowledge of farmers and ranchers  
7 and potential farmers.

8 Q So there are people out there who would like  
9 to own chicken houses and be independent of an  
10 integrator and raise chickens; is that true? 01:19PM

11 A I believe it is.

12 Q So those people would have to go out and buy  
13 baby chicks and place them in their own houses and  
14 then to whom would they -- is that true?

15 A Yes. 01:20PM

16 Q Own their birds?

17 A Uh-huh.

18 Q And then to whom would those people sell those  
19 birds for processing; would they own their own  
20 processing plants? 01:20PM

21 A That's the issue. There's no open transparent  
22 market for broilers ready to be processed.

23 Q Is that a bad thing?

24 A Not necessarily.

25 Q Okay. Paragraph 13 you state, in the early 01:20PM



1 history of the vertically integrated poultry  
2 industry, the integrators and growers were partners  
3 and tended to look out for each other's economic  
4 welfare. What's the basis for that statement?

5 A Just the few descriptions of the early 01:21PM  
6 integrated industry that I have read.

7 Q And what would be your source?

8 A There's one book on the Arkansas poultry  
9 industry that's somewhere in the documents.

10 Q From Hills and Hollers? 01:21PM

11 A Yes, and a few journal articles have addressed  
12 this, you know, ag econ or ag business journal  
13 articles. So that is the extent of my knowledge of  
14 the early industry.

15 Q And to what extent were these people partners 01:21PM  
16 with each other?

17 A I would say they worked more closely together,  
18 that's my understanding, and were each concerned  
19 about the other's economic welfare.

20 Q You don't think that the integrators are 01:22PM  
21 concerned about the economic welfare of their  
22 growers today?

23 A In some sense they may -- they have to be  
24 concerned about their growers, but from all of the  
25 records I see, the actual information that's 01:22PM

1 available, I mean the information that's available  
2 on actual returns to contract poultry production  
3 show that with proper economic accounting, the  
4 grower is not making a competitive return for labor,  
5 management, risk and equity. 01:22PM

6 Q What did you just tell me?

7 A I just told you that with proper economic  
8 accounting, the actual information on cost and  
9 returns to contract broiler production that I have  
10 found show that the grower is not making a 01:23PM  
11 competitive return for labor, management, equity and  
12 risk.

13 Q They're making money?

14 A No, they're not making money.

15 Q Didn't we go through that earlier when we were 01:23PM  
16 talking about cash flow?

17 A I'm trying to carefully distinguish between  
18 cash flow, which is how a banker looks at it, and  
19 how a farmer may look at it, wanting to know if they  
20 can at least pay off the loans at the bank or loans 01:23PM  
21 to wherever they -- you know, whoever they have a  
22 loan with versus true economic accounting. Cash  
23 flow is one kind of accounting, and that is an  
24 important consideration, but there's also economic  
25 accounting, economic profitability accounting. 01:24PM

1 Q Tell me all of the elements that go into  
2 determining outcome based on your evaluation of  
3 something called economic accounting.

4 A All of the cost and returns, the amount of  
5 labor a grower or grower's family brings to the  
6 operation.

01:24PM

7 Q Let's do this in an organized fashion.

8 A Okay.

9 Q Let's do one, two, three, four, five, and  
10 we're talking about on the cost side; is that true?

01:24PM

11 A Yes.

12 Q Okay.

13 A Well, there are the out-of-pocket -- this is  
14 methodology that's laid out in a 500 some page  
15 handbook that my professional association put  
16 together but --

01:24PM

17 Q What's the name of the handbook?

18 A It's the American Agricultural Economic  
19 Association Task Force Report on Cost and Return  
20 Estimation.

01:25PM

21 Q In the poultry industry?

22 A Everything.

23 Q Everything?

24 A But it talks about annual row crops, and it  
25 also has sections addressing an asset with a long

01:25PM

1 life, as we have here with a poultry house.

2 Q I just want to talk about chickens.

3 A Okay.

4 Q So, now, I'm sorry to keep interrupting you,

5 but go ahead and go through your checklist.

01:25PM

6 A Well, it talks about the risk aspect and what

7 formula to use, how to incorporate cost and returns.

8 Q Tell me all the elements that go in on the

9 cost side.

10 A All of the elements that go in on the cost

01:25PM

11 side?

12 Q For a chicken grower to determine whether he's

13 making money.

14 A To determine whether he is making money? The

15 out-of-pocket expenses -- well, the whole

01:25PM

16 methodology is laid out in farm business analysis

17 association records, and several states have that at

18 land grant universities, and in the reports there

19 are like ten or twenty items but to aggregate some

20 of those out-of-pocket expenses that they would

01:26PM

21 have, there's a proper way of consideration loans

22 and how to charge that out or depreciation. There

23 is an imputed value for labor and management and one

24 for a way of incorporating a market return on

25 equity, and typically the way the risk is handled is

01:26PM

1 through a discount rate and a present value formula  
2 or amortization formula, and the manual even goes  
3 into discussing --

4 Q Doctor, I'm not deposing the manual. I'm  
5 deposing you, and you're the expert witness in this  
6 case, and I'm asking you a very simple question.

01:27PM

7 I'm asking you to sit here and do it right now, take  
8 me through all the considerations that go into the  
9 ultimate answer about whether a farmer is making

10 money according to the way it ought to be analyzed  
11 per your testimony, and if we need to take 30  
12 minutes, we'll take 30 minutes to do that.

01:27PM

13 A I thought I was answering your question.

14 Q Well, I guess I'm just dense, but I'm asking  
15 you to talk to me like I'm a fourth grader and  
16 explain it to me and show me all of the elements  
17 that are taken into consideration in a proper  
18 economic analysis to determine whether a chicken  
19 grower is making or losing money, one, two, three,  
20 four, five, real world.

01:27PM

01:27PM

21 A Well, it starts with a complicated present  
22 value or amortization formula that covers the whole  
23 life of an asset. Factored into that are the gross  
24 returns year by year. Factored into that are  
25 various out-of-pocket expenses a grower has for a

01:28PM

1 house, heating the house and repairs, maintenance,  
2 all of that.

3 Q I understand that.

4 A Okay.

5 Q It's these exotic things that don't really 01:28PM  
6 represent having to write a check to pay a bill that  
7 I do not understand that I'm asking you to explain  
8 to me.

9 A If you go through, you know, the annual flow  
10 of revenues, the out-of-pocket costs, then there is 01:28PM  
11 an appropriate way to handle economic depreciation,  
12 the proper way of handling interest on a loan.

13 Q Tell me what that is. If you need to use an  
14 example, like somebody borrowing two million dollars  
15 to build an eight-house complex, that's fine. I 01:29PM  
16 don't care how you do it, but I want the  
17 particulars. I want to know what it looks like.  
18 I'm a grower getting ready to go into business and  
19 I'm asking you for advice and I want you to explain  
20 to me why I should not be a grower, that I should 01:29PM  
21 rather be a banker.

22 A You got to have the full time stream of  
23 revenues, the full time stream of out-of-pocket  
24 costs, the economic life of a house, when they  
25 anticipate the equipment in a house will be upgraded 01:29PM

1 and let's -- the normal economic life of a wood  
2 framed house is 20 to 30 years, and usually when you  
3 get out near the 10 or 15 years, a major upgrade is  
4 required. I have to know the cost of that, when it  
5 will happen, and then there's a way of handling the 01:29PM  
6 time path by discounting, and the typical way of  
7 doing this is to first calculate, after you've taken  
8 out proper economic depreciation and all of these  
9 other expenses, to calculate a return that is a  
10 composite to management, to labor, to equity and to 01:30PM  
11 risk, and then typically ag economists go through  
12 and figure out how much of the operator's labor is  
13 used that is valued at a competitive rate. That is  
14 then subtracted out, and that leaves you with a  
15 return to management, equity and risk. Then you can 01:30PM  
16 take out a return, a market return for equity that  
17 they have in the operation, and then you're left  
18 with a return to management and to risk. In the  
19 case of poultry operations, it's hard to place a  
20 value on a grower's management per se, especially 01:31PM  
21 because they have to be on call 24-7. Risk is  
22 normally handled through a discount rate that you  
23 adjust for inflation. The ag econ handbook  
24 recommends a 3 to 6 percent real discount rate for a  
25 return to risk. 01:31PM

1 Q Now, in the real world do you think that  
2 somebody making a decision to be a grower takes all  
3 those things into account?

4 A I would hope they would.

5 Q But do you think they do? 01:31PM

6 A I haven't surveyed them. Apparently not.

7 Q What if you're a hundred acre farmer and you  
8 are raising cattle and mom teaches school and you'd  
9 like to build four chicken houses and determine  
10 whether or not you are going to make some extra 01:32PM  
11 money; do you think that's a way a lot of those  
12 decisions might be made?

13 A In some cases.

14 Q In fact, what I just described is more typical  
15 the profile of someone who grows chickens than a 01:32PM  
16 factory farmer type grower; isn't that true?

17 A Ask your question -- factory farmer, I don't  
18 understand what you mean.

19 Q It was a bad question. I'm trying to compare  
20 somebody who's got 20 acres of land and has 10 01:32PM  
21 chicken houses on it. We're still looking at the  
22 typical profile of a grower in northeast Oklahoma to  
23 be, as I previously described, a hundred acres of  
24 land. They grow -- they have cattle, a small herd  
25 of cattle. 01:33PM



1 A Uh-huh.

2 Q One of the spouses will work in town, whether  
3 in a factory or teach school, something along those  
4 lines. One of them will remain on the farm and then  
5 the second one might have a part-time job elsewhere 01:33PM  
6 and they want some supplementary income. They go to  
7 the bank and borrow money to build four houses and  
8 they're in business.

9 A Okay.

10 Q Didn't I just describe what is more typical in 01:33PM  
11 the real world than this rather sophisticated arcane  
12 description of whether somebody is actually making  
13 money by your economic analysis?

14 MR. RIGGS: Object to the form.

15 A I think it's typical if there is the 01:33PM  
16 expectation that when they get all of these loans  
17 paid off, then they will start making a good return  
18 on their investment and for their labor, but often  
19 what happens is, they have to upgrade the houses and  
20 they're back into the debt cycle and never break out 01:34PM  
21 of that.

22 Q The original issue was whether or not growers  
23 make a living, at least I think that was the  
24 original issue, excuse me, and have we established  
25 that from a cash flow basis, your average grower of 01:34PM

1 chickens will make money at the end of the day?

2 A Cash flow is not proper economic accounting.

3 Q But have we established that on a cash flow  
4 basis, that they will make money?

5 MR. RIGGS: Object to the form. 01:34PM

6 A They will not necessarily make money. They  
7 can pay off those big loans early on.

8 Q How could it be that there's been such growth  
9 in the industry over the last 20 years and there  
10 have been so many new growers coming into the field 01:35PM  
11 and people aren't making money; how can that be?

12 A Well, again, part of it is the expectation  
13 that they will get that. There are no public  
14 statistics I'm aware of showing the number of new  
15 growers. So I don't know whether your assertion 01:35PM  
16 about a large number, whatever word, adjective you  
17 used, is correct or not.

18 Q Would growers be better off if integrators  
19 disappeared?

20 A No. I've never maintained that. 01:35PM

21 Q Would growers be better off if chicken litter  
22 in the IRW could not be used as a fertilizer?

23 A Are we talking about an individual grower?

24 Q I'm talking about -- yes.

25 A It would depend on their operation, but as I 01:36PM

1 understand it, the P levels are already built up as  
2 high as needed for almost any crop or activity,  
3 agricultural activity. So that grower would not  
4 need phosphorus for a long, long time.

5 Q Do you know that -- we talked about this 01:36PM  
6 before. Do you know the NRCS regs that apply to the  
7 STP level at which one ought not to be applying  
8 litter anymore?

9 A I've seen them.

10 Q And do you know that there are a lot of fields 01:36PM  
11 in the IRW that are less than that optimum -- that  
12 high rate?

13 A I asked if you wanted me to answer this from  
14 the standpoint of an individual and incentives  
15 facing that individual, and if the P level is not up 01:37PM  
16 to that threshold, assuming that it's the  
17 appropriate threshold, then there might be an  
18 economic value for applying litter and waste  
19 products in that situation for that individual, but  
20 in the aggregate it's a whole different matter. 01:37PM

21 Q Let's talk about the aggregate for a second.  
22 Do you know that the present market conditions in  
23 the IRW require that a grower be paid approximately  
24 \$7 a ton for his or her litter?

25 A A requirement that they be paid that much? 01:37PM

1 Q That the market requires that? That's what  
2 the market says they get for it.

3 A Are we talking -- well, I've seen different  
4 numbers. I've seen down to \$3 with it in the house,  
5 and so it depends on where it is because is that \$7 01:38PM  
6 in the house or is the \$7 piled up?

7 Q \$7 in the house.

8 A \$7 in the house?

9 Q Yes, sir.

10 A That seems high but -- from the preliminary 01:38PM  
11 work I've done. It depends on who has to clean it  
12 out.

13 Q If the attorney general prevails in this  
14 motion, then all the litter has to be shipped out of  
15 the watershed and it can't be utilized as fertilizer 01:38PM  
16 inside the watershed, the value of the litter is  
17 going to go down for the individual farmer, isn't  
18 it?

19 A More than likely the gross value will go down.

20 Q And it's not going to be available to be 01:38PM  
21 utilized by cattle farmers who have no chicken  
22 houses whatsoever; isn't that true?

23 A I will assume that.

24 Q And in order for those farmers to maintain  
25 their foraging levels, they're going to have to buy 01:39PM

1 commercial fertilizer, aren't they?

2 A Not necessarily.

3 Q What are they going to do; how are their crops  
4 going to grow?

5 A In terms of fertilization and the yield 01:39PM

6 response of plants to different plant nutrients, you  
7 know, the textbook treatment is that yield increases  
8 with an input and then it goes over and falls down,  
9 but it's actually more of an extended plateau

10 concept and effect, and if the levels of fertility 01:39PM

11 are already high, they could be out on that plateau  
12 and there is no more economic return to applying  
13 fertilizer or waste in that situation.

14 Q What about in the real world, though?

15 A That's the real world. 01:40PM

16 Q What if somebody is trying to get two or three  
17 cuttings of hay in a pasture of a hundred head of  
18 cattle at a stockage rate of a cow per two acres?

19 A If they're out on the yield plateau, applying  
20 more fertilizer will not increase forage or pasture 01:40PM  
21 production.

22 Q That's your testimony?

23 A Yes.

24 Q Will you bet the outcome of this case on the  
25 accuracy of that testimony? 01:40PM

1 A Under the conditions I have stated, that there  
2 tends to be a yield plateau, and in many states that  
3 is the way extension makes soil fertility  
4 recommendations is consistent with that, especially  
5 as it relates to P and K. I'm saying if they're out 01:40PM  
6 on that plateau, then there would be absolutely no  
7 yield increase and so applying more fertilizer will  
8 not increase forage or pasture production.

9 Q Doctor, Paragraph 15, you say that growers  
10 bring roughly one-half of the capital and much of 01:41PM  
11 the labor required to produce a processed whole  
12 bird?

13 A Uh-huh.

14 Q Does that mean that if the total investment in  
15 the houses and the watershed is approximately -- 01:41PM

16 A The same as the -- pardon me.

17 Q 15, Page 6, does that statement mean that it's  
18 your testimony that the value of all of the chicken  
19 houses and the attendant equipment in those chicken  
20 houses in the IRW is roughly equivalent to the value 01:41PM  
21 of all of the hatcheries, feed mills and chicken  
22 processing plants and rendering facilities in the  
23 IRW?

24 A This is the old rule of thumb that I heard 20  
25 years ago when I first came into the state of 01:42PM

1 Alabama in a poultry area and I couldn't find the  
2 source, and so at the time I took public financial  
3 statements of the integrators that were publicly  
4 traded and those that didn't get involved in  
5 extensive processing, and that seemed to be a rough 01:42PM  
6 approximation, but I stated -- no. I did this more  
7 like 10 years ago but state a processed whole bird.  
8 A lot of their activities take it much further and  
9 get into parts and products made from chicken parts  
10 and all of that, and I'm not counting all of that 01:42PM  
11 capital, and in terms of comparing it, it also  
12 depends on whether and what extreme you have all new  
13 poultry houses and all old feed mills or if you have  
14 all old poultry houses and all new feed mills and so  
15 forth. I'm just saying it's kind of a rule of thumb 01:43PM  
16 that it had been around the industry, and when I  
17 checked it out as best I could, it seemed like a  
18 decent approximation.

19 Q That's ten-year old information?

20 A Ten or fifteen, yes. 01:43PM

21 Q Based on what you've been told?

22 A I just said that that was a rule of thumb that  
23 I had heard for some time. To the extent I could, I  
24 checked it out with publicly available information  
25 on asset values for a few of the integrators that 01:43PM

1 were not heavily involved in further processing.

2 Q But in all fairness, you don't provide that  
3 explanation in your affidavit that you just gave, do  
4 you; you just say it's true?

5 A I said what I said. 01:44PM

6 Q And you contend that it's true in Paragraph  
7 15?

8 A I say growers bring roughly one-half, and I  
9 meant roughly.

10 Q We've talked about Paragraph 16 ad nauseam. I 01:44PM  
11 just want to ask you the name of the 1992 OSU study  
12 and the name of the 2006 OSU report.

13 A Three or four or five-page OSU Cooperative  
14 extension bulletin.

15 Q We're talking about '92? 01:44PM

16 A Yeah, and I think on their bulletin numbering  
17 they actually have the same number on the '92 as  
18 they do on the '06 one and different authorship, but  
19 it's the same extension bulletin number F202 or  
20 something like that. 01:45PM

21 Q Are both of these studies contained in these  
22 two boxes of documents on the desk?

23 A I think so.

24 Q At the next break would you be kind enough to  
25 find those so we can get the Bates stamp numbers and 01:45PM



1 have them in the Record for sure?

2 A I can try. It takes a while to go through  
3 there but I can definitely get them. They are  
4 available -- the '06 one is available on a public  
5 web page that OSU has.

01:45PM

6 Q It probably won't surprise you to know that  
7 some other people are going to be looking at your  
8 testimony.

9 A No, that won't surprise me.

10 Q And in order for them to know what they're  
11 looking at, we got to know what we're looking at.  
12 That's all I'm asking, that they be identified with  
13 particularity.

01:45PM

14 A Okay. If -- I'm certain -- I think the '92  
15 one was in there. I'm certain that the '06 one is  
16 in electronic form on the CV you were given.

01:46PM

17 MR. RIGGS: They should be there, too.

18 Q Where did you get the information in No. 17,  
19 that the average size of a grower's operation in the  
20 IRW is approximately three to four houses?

01:46PM

21 A That's generally true of poultry in the whole  
22 United States, and I talked briefly to plaintiff  
23 attorneys, and they indicated that they felt that  
24 was correct.

25 Q And how many acres of land are owned by the

01:46PM

1 average grower in the IRW?

2 A I do not know. Educated guess would be a  
3 hundred to 150 acres.

4 Q Okay. What's the basis for your statement in  
5 No. 18 that farmers become commercial contract  
6 growers by invitation only?

01:47PM

7 A Well, as we discussed earlier, you can't go  
8 out and buy chicks and start producing them and have  
9 an open market in which to sell a broiler ready for  
10 processing. The way the system generally works is 01:47PM  
11 somebody who's within an area defined by the  
12 integrator, that person is interested in becoming a  
13 grower. They talk to an integrator representative,  
14 and most of them, I understand, maintain a list of  
15 people interested in becoming a grower, and so 01:48PM  
16 that's the only way to become a grower, is for the  
17 integrator to approve that person and to first  
18 generally put out a letter of intent, which is  
19 followed by a contract.

20 Q Yes, sir, but -- well, you'll agree with me 01:48PM  
21 that no one wants to do business with anybody who  
22 lacks integrity?

23 A Certainly.

24 Q And it's perfectly legitimate for poultry  
25 companies to determine the integrity of someone that 01:48PM

1 is asking to do business with them; is that true?

2 A Yes.

3 Q And will you also agree with me that with

4 regard to the words invitation only, that it would

5 be just as true that somebody would come knocking on 01:48PM

6 the door of a poultry company and say, hey, I sure

7 would like to sit down with you because I think I

8 want to raise birds?

9 A Uh-huh.

10 Q And you call that invitation? 01:48PM

11 A Their name is then put on a list and then the

12 integrator must give them the go-ahead, and I

13 consider that by invitation.

14 MR. ELROD: Let's take a break and change

15 tapes. 01:49PM

16 VIDEOGRAPHER: We're now off the Record.

17 The time is 1:48 p.m.

18 (Following a short recess at 1:49 p.m.,

19 proceedings continued on the Record at 1:58 p.m.)

20 VIDEOGRAPHER: We are back on the Record. 01:58PM

21 The time is 1:58 p.m.

22 Q Doctor, while we were off the Record, I think

23 that you identified the two OSU articles, the '92

24 and '06 that we discussed earlier?

25 A Yes. 01:58PM

1 Q Could you give us the Bates stamps numbers in  
2 the lower right-hand corner that says --

3 A On the '06 it's 1538 through 1544, and Claire  
4 is still searching for the other.

5 MS. XIDIS: I'm sorry. We'll get you the 01:58PM  
6 Bates on the '92 shortly.

7 MR. ELROD: Okay. Very good.

8 Q Doctor, for the second time I'm going to not  
9 go into the depth we have on some of your  
10 paragraphs, but I would like to look at Paragraph 01:59PM  
11 24.

12 A Okay.

13 Q About four lines up from the bottom it says,  
14 before concern over phosphorus came to the  
15 forefront, there was widespread concern over excess 01:59PM  
16 nitrogen in poultry waste?

17 A Yes.

18 Q About what year do you peg that phosphorus  
19 really started getting on everybody's radar screen?

20 A I mentioned the Rockefeller Project that I 01:59PM  
21 started on in 1972. There was a sister or brother  
22 Rockefeller Project at Cornell University. The  
23 Illinois project concentrated on nitrogen, and  
24 Cornell concentrated more on phosphorus than on  
25 nitrogen throughout it, but the point at which 02:00PM

1 concern switched from possible problems with  
2 nitrogen in poultry waste to phosphorus was after I  
3 moved -- shortly after I moved to Auburn, which was  
4 1998, but I don't remember, you know, a precise  
5 year, but certainly the early 1990's.

02:00PM

6 Q Okay. All right. Let's move to the big one  
7 in Paragraph 25.

8 A Okay.

9 Q Now, are you referring to Tabler and Berry?

10 A Yes.

02:01PM

11 MR. ELROD: The one that I have, which  
12 should be copied from the CD, does not have the  
13 tables that are described. Do you all know what  
14 that might be about?

15 MS. XIDIS: Do you have a Bates?

02:01PM

16 MR. ELROD: Mine goes from Taylor 858  
17 through Taylor 862, but it has no tables. We got it  
18 right off the CD. At least we sent it to a  
19 commercial printer who gave us this back.

20 A May I look at that?

02:01PM

21 Q Yeah.

22 A I probably -- I don't know where I picked this  
23 up, but there is one published in Avian Advice, and  
24 on the CD there is an Avian Advice subdirectory and  
25 it has all of those, including the one by Tabbler --

02:01PM

1 Tabler and Berry, so I may --

2 Q What am I looking at right here? This says  
3 Tabler and Berry on the body of it.

4 A What I did is from this poultry site --

5 Q Uh-huh. 02:02PM

6 A -- they had posted the article, and I did a  
7 cut and paste so I could print out this particular  
8 version of it without having all of the color stuff  
9 on the poultry site web page along with it, but the  
10 one I'm referring to here is as cited, the article 02:02PM  
11 out of Avian Advice.

12 Q But that would be not be on the CD?

13 A No. It is.

14 MS. XIDIS: It should have been produced in  
15 this production. Let me see if I can get a Bates 02:02PM  
16 range on that.

17 MR. ELROD: See if you can find it and  
18 while you're doing that, we won't waste time, but  
19 for Record purposes I'm operating off of 858 through  
20 862, and at the very top of 858 there's a website. 02:03PM

21 A Right.

22 Q Now, did you also do some calculations in your  
23 own handwriting? That would be this right here.

24 A Yes.

25 Q All right. I'm going to mark this as 3. Let 02:04PM

1 me hand you 3 and put that in front of you, and 2 is  
2 what I call Tabler and Berry.

3 A Okay. It appears to be essentially --

4 MR. RIGGS: May I have a copy of that one?

5 MR. ELROD: Yeah.

02:04PM

6 MR. RIGGS: Thanks.

7 Q All right, Doctor. Let's -- I think the best  
8 way to do that is 3 are the calculations that go  
9 into your statements in Paragraph 25; is that true?

10 A Correct.

02:05PM

11 Q All right. There's no way to do this other  
12 than to do it line by line and for you to explain to  
13 us exactly what it is that you are doing, and I know  
14 that I'll be interrupting as you do that, but we're  
15 looking at No. 3.

02:05PM

16 A Okay. The first number is .0000, four zeros,  
17 6 per mile per pound of litter for hauling, and that  
18 is taken directly from Tabler and Berry. It's the  
19 Bates 860 page, so it's right here. So my first  
20 calculations are simply duplicating Tabler and  
21 Berry.

02:05PM

22 Q So you relied -- for that .00006 dollars per  
23 mile per pound of litter, you took that directly  
24 from Tabler and Berry and conducted no investigation  
25 yourself; is that true?

02:06PM

1 A Well, to back up, in Tabler and Berry, it's \$3  
2 per mile. He cites the Goodwin 2003 article.  
3 Goodwin is a well respected ag economist at the  
4 University of Arkansas, who has done quite a bit of  
5 work on the poultry industry. 02:06PM

6 Q I know him well.

7 A So, yes, I took this.

8 Q And I agree with what you just said about H.  
9 L. Goodwin. But those numbers were current as of  
10 2003? 02:06PM

11 A Yes.

12 Q And gas prices have increased exponentially  
13 since then, haven't they?

14 A I don't know if it's exponential, but they've  
15 gone up quite a bit. They're diesel prices. 02:06PM

16 Q So these would be -- these would factor in  
17 1993 diesel prices; correct?

18 A Correct -- no. 2003.

19 Q 2003. So that .00006 dollars per mile per  
20 pound of litter represents total hauling costs or 02:07PM  
21 fuel or what?

22 A Total hauling costs is my understanding.

23 Q All right. Then what's the next entry.

24 A .6 pounds of litter per pound of bird. That  
25 also comes from Tabler and Berry. 02:07PM



1 Q So they -- you've adopted their statement that  
2 a what pound bird during its lifetime will produce  
3 .6 pounds of litter?

4 A Yes.

5 Q What -- how many pounds is that -- it's per 02:07PM  
6 pound of bird?

7 A Per pound live weight of bird.

8 Q All right. So according to them, a five-pound  
9 bird would produce three pounds of litter during its  
10 lifetime? 02:08PM

11 A Yes, during its 50 or 60-day life.

12 Q Okay, and litter is used here. Does that  
13 include bedding material or is that pure manure?

14 A As I understand, that is the mix of --

15 Q Of course, a bird doesn't crap bedding, does 02:08PM  
16 it?

17 A It is a mix of the old bedding material and  
18 the feces and whatever else happens to be there.

19 Q Does it include water?

20 A Most of the numbers I have seen like this 02:08PM  
21 converted to a moisture basis, and I think in some  
22 other articles in Avian Advice they show that. They  
23 report the percentage moisture content for that,  
24 like six pounds.

25 Q My question to you is your calculations. Does 02:09PM

1 the .6 pounds of litter per pound of bird taken --  
2 is that on a dry matter basis or does that take  
3 moisture into consideration and if it does, how  
4 much -- what percentage of moisture in the litter?

5 A As I understand it, it is a dry matter basis 02:09PM  
6 but the dry matter basis is not zero water.

7 Q Where do you get that information?

8 A As I mentioned, I think there are other  
9 articles in Avian Advice where they report moisture  
10 content at which they came up with .6 pounds. 02:09PM

11 Q Well, are you unable to tell me as you sit  
12 here right now whether that .6 pounds is on a dry  
13 matter basis or whether it includes moisture, and if  
14 it does include moisture, at what percentage rate?

15 A I'm telling you that it's my understanding it 02:10PM  
16 is on a dry weight basis, but I think for a dry  
17 weight basis, the standard is not zero percent water  
18 but 20 percent or something like that.

19 Q So the answer to the question is you cannot  
20 tell me, as you are sitting here today, the answer 02:10PM  
21 to my question?

22 A I can't give you the exact percentage moisture  
23 content for the .6 pounds.

24 Q That is an important issue in terms of the  
25 calculations, is it not? 02:10PM

1 A Yes.

2 Q Okay. What's the next entry?

3 A The next entry is the .6 times the .00006 as  
4 reported in Tabler and Berry. So the first three  
5 numbers here are straight out of the articles by 02:11PM  
6 Tabler and Berry.

7 Q And what are you --

8 MS. XIDIS: I believe we have a version  
9 with the chart if that helps.

10 MR. ELROD: Let me see it. 02:11PM

11 A Okay.

12 MS. XIDIS: I just want Dr. Taylor to  
13 eyeball it to make sure I pulled the right document.

14 A That is correct. In Table 2 they show  
15 moisture content. So whatever standard they used, I 02:11PM  
16 stuck with that.

17 Q All right.

18 MR. ELROD: Now, for Record purposes, I've  
19 been handed a document entitled Avian Advice, fall  
20 2003, a publication University of Arkansas, Division 02:11PM  
21 of Agriculture, and it's Bates stamped Taylor 2564  
22 through 2575. Do you think we can get copies of  
23 this at one point in time?

24 MS. XIDIS: How many copies do you want?

25 MR. ELROD: Five or six. 02:12PM

1 Q So what's the next entry?

2 A The fourth entry I simply multiplied the third  
3 entry by a hundred miles, and that gives the cost of  
4 dollars, .0036, per pound of live bird to haul the  
5 waste 100 miles.

02:12PM

6 Q Okay, and then the next entry halves that; is  
7 that correct?

8 A Correct.

9 Q So you're saying -- you're reaching an  
10 ultimate conclusion that half of the litter produced  
11 in the shed is going to be hauled out; is that what  
12 you're saying?

02:12PM

13 A It's not a conclusion. It is an assumption.

14 Q All right. Now, who told you to make the  
15 assumption of one-half?

02:13PM

16 A Nobody told me to.

17 Q Why did you make the assumption of one-half?

18 A No sound reason. An article by Goodwin and  
19 others looks at the cost of hauling a third of it  
20 out. That is an assumption because I do not know  
21 how much needs to be hauled out. At least at this  
22 time I do not know.

02:13PM

23 Q Well, are you going to know by the time we  
24 have this PI hearing?

25 A I don't plan on doing any additional work.

02:13PM

1 Q Okay. That's fine. I just need to know. All  
2 right. Read to me the next words, if you would,  
3 please.

4 A Haul a half dollars .0018 per pound bird for a  
5 hundred miles. Actual -- you want me to continue? 02:14PM

6 Q Yes, sir.

7 A Actual cost to integrator of producing a bird  
8 ready for slaughter, including grower pay, is 25  
9 cents to 30 cents a pound live weight.

10 Q Okay. What's your next entry? 02:14PM

11 A Hauling half out 100 miles, between one-half  
12 and 1 percent of production costs. So that is the  
13 .0018 relative to the .25 to .30.

14 Q All right.

15 A And then only half of that if integrator bale 02:14PM  
16 litter for transport.

17 Q Where did you get that information?

18 A One of the studies by Goodwin looks at litter  
19 and baling it to haul, and if they bale it, then the  
20 truck can get a back-haul and if they -- 02:15PM

21 MR. ELROD: Hang on. Time out.

22 MR. RIGGS: I guess Jennifer left us or she  
23 got disconnected somehow.

24 MR. ELROD: She'll call back.

25 Q Go ahead, Doctor. 02:15PM

1 A Well, that was a point made in one of the  
2 other articles, that if they would actually bale or  
3 have a central facility and bale it, then because  
4 the trucks could get a back-haul, then that would  
5 cut the cost of hauling the litter out by half.

02:15PM

6 Q Purely because they get a back-haul; it has  
7 nothing to do with being able to load more weight on  
8 the outgoing truck?

9 A No. It's purely the back-haul.

10 Q What would be back hauled?

02:16PM

11 A I don't recall.

12 Q And this is from an article by H. L. Goodwin?

13 A Yes.

14 Q And can you refer us to that article?

15 A I would have to dig through all of that.

02:16PM

16 There's one article Too Litter Too Late, and I think  
17 it's in that one, but I'm not certain.

18 Q We will have to know the answer to that  
19 question before we finish today.

20 MR. RIGGS: John, perhaps it's in the  
21 bibliography, the name of that article. I see a  
22 reference to a Goodwin article in 2003.

02:16PM

23 A That's personal communication.

24 MR. RIGGS: That wouldn't be it. I thought  
25 I saw Goodwin's name on it.

02:16PM

1 A There's several articles by Goodwin addressing  
2 the cost of transporting, and that came out of one  
3 of those.

4 Q Have you talked to Sheri Herron?

5 A No. I don't know -- Sheri Herron? 02:17PM

6 Q Yes.

7 A I do not know her.

8 Q She's the one who has coordinated and created  
9 the hauling activities of BMPs, Inc.

10 A Oh. 02:17PM

11 Q Which I'm going to start testifying here for a  
12 second.

13 A Okay.

14 Q Hauled 70,000 tons out last year and is really  
15 the only, along with George's, entity or company 02:17PM  
16 that is actually real world hauling litter out of  
17 the watershed.

18 A Uh-huh.

19 Q Don't you think it -- assuming that my  
20 testimony is accurate, don't you think it would be 02:17PM  
21 of benefit to talk to Sheri Herron about how much  
22 it's actually costing and how it's being done?

23 MR. RIGGS: I'm going to object to the  
24 form.

25 A Yeah, I would like to know the actual, but 02:18PM

1 without knowing anything about the organization, I  
2 wouldn't know if that was valid or not.

3 Q Okay, all right. Where are we down to now?

4 Oh, the baling issue. What is your understanding of  
5 whether that's actually being done in the real world  
6 and the status of it?

02:18PM

7 A If it's done, it's not extensive.

8 Q It's still in an experimental stage; isn't  
9 that true?

10 A Or in the stage of being adopted somewhere.

02:18PM

11 (Whereupon, a discussion was held off  
12 the Record.)

13 Q So the point is, Doctor, you have no knowledge  
14 as to whether or not in the real world baling of  
15 litter is actually happening?

02:19PM

16 A No, I do not. I think it is not extensive if  
17 it's happening at all. Most of it is hauled loose.

18 Q And what's the next entry?

19 A Below the line is .0018 per pound bird live  
20 weight. The next one is the live weight to dressed  
21 weight conversion. That's -- I can't read this. I  
22 don't know if it's 72.5 percent or .8 percent, and  
23 so haul --

02:19PM

24 Q Wait a minute. We can't just leave it like  
25 that.

02:19PM



1 A I can't read on this copy whether that is a 5  
2 or an 8. It's 72.5 or 72.8 percent.

3 Q Oh, I'm sorry. I don't care whether it's that  
4 close. I thought you were saying whether it was .8  
5 or .72. 02:20PM

6 A No. Some in the industry use 73 percent, but  
7 this was calculated from total production  
8 statistics.

9 Q Where did you get that number?

10 A Just calculated from -- 02:20PM

11 Q No. The 72.5?

12 A Poultry -- calculated from poultry production.  
13 USDA reports live weight and dressed weight, and I  
14 calculated it on my own.

15 Q Okay. Is it your testimony then that the 02:20PM  
16 average broiler dresses out at 72.5 percent of live  
17 weight?

18 A Ready to cook, yes, from live to what USDA  
19 calls RTC.

20 Q And that's a calculated number, calculated by 02:20PM  
21 you?

22 A This is calculated by me. I've seen the  
23 industry use 72 or 73 percent, so --

24 Q Now, what's the next entry?

25 A The next entry says haul half dollars .0025 02:21PM

1 per pound ready to cook weight.

2 Q And where did -- where was that number  
3 derived?

4 A That was calculated by dividing .0018 by .72

5 whatever, and then Doye and Tabler Berry show

02:21PM

6 414,176 pounds live weight per house.

7 Q 414,176?

8 A Yes.

9 Q Who is Doye, D-O-Y-E?

10 A Damona Doye, the author of the Oklahoma

02:21PM

11 State --

12 Q Okay. So that's a what sized houses?

13 A 20,000, standard.

14 Q 20,000 bird house?

15 A 20,000 square foot house.

02:22PM

16 Q 20,000 square foot house will produce 414,176  
17 live weight pounds of chicken?

18 A That's -- may I see the Tabler and Berry one  
19 out of Avian Advice?

20 Q Yeah. We need to make that an exhibit anyway.

02:22PM

21 It's now 4.

22 A And the Doye '06 one.

23 Q Did we get that one identified for the Record  
24 by Bates stamp, just by Bates stamp number?

25 A Oh. Taylor 1538 through 1544.

02:22PM

1 Q Okay. So there -- they say that a 20,000  
2 square foot house will produce 414,176 pounds of  
3 live weight per year?

4 A That's just a ballpark number.

5 Q Is that per year? 02:23PM

6 A Per year.

7 Q All right. Page 2, 6583 Bates stamp.

8 A Okay. That was -- well, it says assuming  
9 3,661 houses in IRW and then based on the previous  
10 numbers, I calculated pounds live weight produced 02:23PM  
11 per year in RTC per year for the IRW. Subsequently  
12 learned that that was the number of houses they  
13 identified from the air, and a lot of those were not  
14 active.

15 Q So your bottom line calculations of this 02:24PM  
16 exhibit are incorrect?

17 A In terms of the aggregate production from the  
18 Illinois watershed that's shown here, yes.

19 Q Okay. What's the next calculation?

20 A Poultry consumption in the United States is 02:24PM  
21 about 105 pounds ready to cook per person per year,  
22 which converts into 145 pounds live weight.

23 Q What's the source of the 105 pounds consumed?

24 A There are USDA statistics on meat consumption  
25 per capita -- 02:24PM

1 Q Okay.

2 A -- that are annual, some even more frequently,  
3 quarterly, and that's a recent average. U.S. live  
4 weight in '06, 48,332,637,000 pounds live weight of  
5 broilers.

02:25PM

6 Q Where did you get that number?

7 A USDA statistics.

8 Q Okay. Why is that number important for your  
9 calculations?

10 A This is important only to come down to look at  
11 how much it would average per consumer per year to  
12 haul the poultry waste a hundred miles.

02:25PM

13 Q I've got to stop you because I'm starting to  
14 get confused.

15 A Okay.

02:26PM

16 Q Actually it was about 9:00 this morning, but  
17 I'm even more confused. You're talking at this  
18 stage about the total amount of broiler meat  
19 consumed in the United States; correct?

20 A Correct.

02:26PM

21 Q But we are -- above that line we're talking  
22 purely about the IRW; correct?

23 A Correct.

24 Q So the IRW does not produce all of the chicken  
25 that's consumed in the United States; correct?

02:26PM

1 A That is the purpose of this calculation  
2 because the next line that's just below halfway  
3 that's circled, Illinois River watershed accounts  
4 for about 2 and a half percent of U.S. production,  
5 and that's the purpose of all of the numbers up 02:26PM  
6 above that, is to get perspective on how much U.S.  
7 production comes out of the Illinois River  
8 watershed.

9 Q Okay. Where did you get that number?

10 A Calculated. 02:27PM

11 Q From using what?

12 A Using the numbers up above.

13 Q So you used the wrong number of houses to get  
14 to that 2.5 percent?

15 A Correct, I did. 02:27PM

16 Q So what's the 2.625 then?

17 A For the average consumer in the United States,  
18 of what they consumed, about 2.625 pounds RTC basis  
19 would come from the Illinois River watershed. So  
20 the average consumer in the United States consumes 02:27PM  
21 about 145 pounds, and taking the 2 and a half  
22 percent of that, we get the 2.6 pounds RTC from the  
23 Illinois River watershed.

24 Q Are you saying that if there was perfect  
25 distribution within the United States, that each 02:28PM

1 American who consumes poultry or each American would  
2 consume 2.625 pounds of chicken from the Illinois  
3 River watershed?

4 A That's correct.

5 Q All right. What's the next calculation? 02:28PM

6 A Haul half out. This repeats numbers from up  
7 above, the .0018 dollars per pound live weight or  
8 .0025 pounds RTC weight, and then that averages out  
9 to about 25 cents per person per year if all was  
10 hauled in the United States but only the 2.5 percent 02:29PM  
11 in the Illinois River watershed. So about half a  
12 cent per year per U.S. and the rest, not need  
13 taxpayer subsidies, and I don't know what that last  
14 word in the lower right-hand corner is.

15 Q Is it citizens? 02:29PM

16 A Oh, that's U.S. citizens. It goes with the  
17 line up above.

18 Q All right. Let's talk about the third page,  
19 6584.

20 A It's a repeat of the information. We've 02:29PM  
21 already gone over that. The same numbers we've gone  
22 over.

23 Q Why are those numbers repeated just out of  
24 curiosity?

25 A Went back and checked the calculations. 02:30PM

1 Q Okay. So based on what we've just gone  
2 through, is it true that you reached the conclusion  
3 in Paragraph 25 that retail consumers of poultry  
4 meat in the United States would pay an average of  
5 one to two pennies per year per person for all  
6 poultry consumed in order to haul one-half of the  
7 chicken litter out of the IRW an average of 100  
8 miles?

02:30PM

9 A Yes.

10 Q Why did you --

02:30PM

11 A Let me clarify something with this last  
12 sentence. That should be an additional cost. I'm  
13 not saying that consumers only pay one or two  
14 pennies a person for all poultry consumed.

15 Q How much would the average person pay if the  
16 transportation of litter was repeated not only for  
17 the Illinois River watershed but for all watersheds  
18 in the United States in which there is poultry  
19 production?

02:31PM

20 A I would have to check calculations, but I  
21 think on Bates 6583 down near the bottom, I'd say 25  
22 cents per person per year if all -- I mean if all  
23 was hauled out.

02:31PM

24 Q Now, what was the purpose of this calculation?

25 A Purpose of the calculation was simply to give

02:32PM

1 perspective to the national magnitude of this.

2 Q What do you mean by that?

3 A Well, to the extent that higher costs are

4 transferred to consumers, then this gives

5 perspective that if the cost of transporting the

02:32PM

6 litter out of the watershed under the stated

7 assumptions, then it wouldn't be a huge deal at the

8 national level.

9 Q In order to test the accuracy of the litter

10 transportation costs, we would have to go to the

02:33PM

11 work of Dr. Goodwin and Tabler and Berry; is that

12 true?

13 A Well, we've covered the intent of these

14 numbers and the sources of them, and we've also

15 covered that this cost estimate needs to be

02:33PM

16 increased somewhat for higher diesel prices.

17 Q But my point is, these are -- the basis for

18 these numbers --

19 A Are the Arkansas studies that I've cited.

20 Q Are adopted by you without question?

02:34PM

21 A For purposes of this preliminary injunction.

22 MR. ELROD: If I could have just one minute

23 to see if I'm through.

24 Q Thank you, Doctor.

25 A Thank you.

02:35PM



## 1 DIRECT EXAMINATION

2 BY MR. TUCKER:

3 Q I'm Colin Tucker. I'm counsel for Cargill

4 Turkey Production and Cargill in this case, and is

5 it all right if I just adopt everything Mr. Elrod 02:36PM

6 said at the beginning of his examination as far as

7 do you understand the question, if you need to take

8 a break?

9 A Certainly.

10 Q The nice things lawyers say? 02:36PM

11 A Certainly.

12 Q Okay, thank you. I'd like to start by

13 following up on the last answer you gave to Mr.

14 Elrod talking about the information you were relying

15 upon for purposes of the preliminary injunction 02:36PM

16 hearing only. It prompts the question, have you

17 been instructed by your counsel that there's one set

18 of standards for the work you do for the injunction

19 hearing and a higher standard required of you later

20 on in the case? 02:36PM

21 A They've not suggested any different standard.

22 Q Are you aware of any?

23 A No.

24 Q All right. Also, yesterday evening I received

25 an E-mail from plaintiff's counsel observing -- 02:37PM

1 noting that you had been provided a document  
2 designated as confidential, attorneys only by  
3 Cargill?

4 A Yes.

5 Q And they did provide the document to me 02:37PM  
6 yesterday so I had a chance to review it. My  
7 initial question to you is, do you recall that  
8 document now or do you need to see a copy of it to  
9 recall which one it is?

10 A I know which document you are referring to. 02:37PM  
11 She has it.

12 Q Did you rely on that document to any extent in  
13 the preparation of your affidavit?

14 A Not at all. They asked me if I had seen the  
15 document, and I said I don't recall it, and then 02:37PM  
16 that's when they produced it to me.

17 Q Did it change any aspect of your affidavit as  
18 far as you testified today?

19 A No.

20 Q Do you expect it to change your affidavit in 02:37PM  
21 the future?

22 A No.

23 Q I don't see any need to go into it further.

24 A Okay.

25 Q You did reference in your testimony today that 02:37PM

1 you testified to Congress?

2 A Yes.

3 Q Okay. That was in 2002?

4 A I have testified in person three times and one  
5 time by invited written testimony, and the dates are 02:38PM  
6 shown here. I guess you have them there.

7 Q I've got a partial record of it.

8 A Okay.

9 Q Your written testimony, was that testimony  
10 concerning the Packers and Stockyard Act? 02:38PM

11 A Which one of these?

12 Q You know, I don't have your whole list in  
13 front of me right now. It's a long list.

14 A Okay. The most recent one pinpointed a couple  
15 of issues dealing with captive supply of cattle 02:38PM  
16 only.

17 Q All right.

18 A And --

19 Q That's all right. I'm just asking generally  
20 if you recall particular testimony, and I had seen a 02:39PM  
21 written report concerning the Packers and Stockyard  
22 Act by you to Congress. You said there's only one;  
23 right? I believe I've got a very poor copy of it  
24 with me.

25 A All of these dealt with livestock or livestock 02:39PM

1 and poultry issues, and if not explicitly dealing  
2 with the Packers and Stockyard Act, then implicitly  
3 dealing with it, but the '02 one, the title of the  
4 hearing was a proposed ban on packer ownership of  
5 livestock and USDA's enforcement of the Packers and  
6 Stockyard Act.

02:39PM

7 Q Right, and that's the one I'm referring to as  
8 well.

9 A That was the title of the hearing.

10 Q I found my cheap copy from the Internet.

02:39PM

11 A Okay.

12 Q It's very poorly formatted, but I wanted to  
13 ask you about a statement you made in that. In your  
14 written testimony, the report you just mentioned,  
15 I'll quote what you wrote. Analysis and enforcement  
16 of the Packers and Stockyard Act and other antitrust  
17 laws will, therefore, require agencies charged with  
18 enforcing these laws stepping up to a much higher  
19 level of theoretical and empirical protection of  
20 practices that are unfair, deceptive, discriminatory  
21 and anticompetitive.

02:40PM

02:40PM

22 A Yes, I said that.

23 Q All right. Is that your way of saying that  
24 responsible government agencies haven't stepped up?

25 A At that particular time there was a

02:40PM

1 proposal -- proposal, a bill up to Congress to  
2 provide additional money for USDA GIPSA to hire  
3 lawyers and economists who had the training to  
4 recognize some of the more sophisticated ways that  
5 markets may be manipulated, and that money was  
6 appropriated and those positions created about that  
7 time, I don't know the exact date, and they also  
8 created a new position just for agriculture that's  
9 under the head of the antitrust division of Justice,  
10 and so I said what I said.

02:41PM

02:41PM

11 Q Is that a long way of saying or is this a  
12 short way of saying that at that time you didn't  
13 think the government was doing enough to enforce  
14 competition laws?

15 A That is correct.

02:41PM

16 Q The problems you see in the marketplace, and I  
17 don't mean just in Congress, I think more in  
18 general, having read a number of writings on your  
19 theories, steer, turkeys --

20 A Right.

02:41PM

21 Q -- you pick your product. Don't you attribute  
22 some fault in the marketplace to the work of  
23 economists such as yourself, and it's not fair just  
24 to ambush you with that statement, so I'm going to  
25 tell you the context that led me to wonder that.

02:42PM

1 Okay?

2 A Okay.

3 Q In that same Congressional report you wrote,

4 perhaps the seemingly and questioned acceptance of

5 vertical integration can be traced to the training

02:42PM

6 of economists. Hildred and Pinto are generally

7 critical of instructional programs in business

8 colleges, programs in agricultural economics and

9 most textbooks overlooking the potential negative

10 effects of VSC.

02:42PM

11 A Uh-huh.

12 Q And could you help me with VSC? That's a term

13 you've used often in your writings, capital V,

14 capital S, capital C.

15 A Vertical supply chain.

02:42PM

16 Q Similar to the integrators you refer to in

17 your affidavit in this case, a vertical supply

18 chain?

19 A Vertical supply chain is a more general

20 expression, and certainly poultry fits into that.

02:42PM

21 Q Okay. From your testimony to Congress, I take

22 it that you approve of Hildred and Pinto's

23 criticisms?

24 A Some of them.

25 Q Are you generally critical of instructional

02:43PM

1 programs in business colleges or overlooking the  
2 potential negative effects of VSC?

3 A First, let me state that industrial  
4 organization textbooks, that industrial organization  
5 is kind of a subdiscipline of economics and it's 02:43PM  
6 where they teach about market structure, the old  
7 system structure, conduct and performance. The  
8 reasons for vertical integration, if you list them,  
9 and some textbooks do, the reasons why a firm might  
10 want to vertically integrate for control, then if 02:43PM  
11 you look at antitrust concerns, it's the same list,  
12 and some of the books say that, but the same things  
13 that may be good can also be bad, and my only  
14 criticism is the business schools tended to  
15 emphasize all of the good things without looking at 02:44PM  
16 how markets, the remaining markets could be  
17 impacted.

18 Q Okay, and do you have that same concern for  
19 programs in agricultural economics, emphasizing what  
20 you say is the good and not emphasizing or 02:44PM  
21 recognizing the bad?

22 A The agribusiness courses, yes.

23 Q Is the same true for the authors of most  
24 textbooks?

25 A The business-type texts, but the industrial 02:44PM

1 organization textbooks cover both aspects.

2 Q Your Congressional testimony further quoted  
3 this Hildred and Pinto as saying that understanding  
4 market structures must be drastically modified to  
5 emphasize the existence and exercise of great market 02:45PM  
6 power within the food system. New understandings of  
7 antitrust policy in vertical relationships are  
8 required.

9 A Uh-huh.

10 Q Now, vertical relationships in the food 02:45PM  
11 system, by that, is that similar to what you're  
12 talking about in this case?

13 A It's similar.

14 Q All right. I want to make sure I'm in the  
15 ballpark. 02:45PM

16 A You're in the ballpark.

17 Q Or a completely different game.

18 A Okay.

19 Q Do you believe that current understandings are  
20 still inadequate? It's been five or six years since 02:45PM  
21 your testimony.

22 A USDA GIPSA has hired people to address the  
23 beef issues. Last word I had, the poultry section  
24 of GIPSA was still in limbo or certainly no external  
25 evidence that issues were being investigated. 02:46PM



1 Q And your testimony was specific when you said  
2 that new understanding of policy were required. Do  
3 you believe that new understandings of policy have  
4 been attained?

5 A It's growing, growing slowly. 02:46PM

6 Q Not nearly enough?

7 A Not nearly enough.

8 Q All right. So as far as this antitrust policy  
9 and its role in market structures, it seems as if  
10 it's you and Bill and Jim Pinto and the 02:46PM  
11 industrial --

12 A Organization --

13 Q -- organizational folks in one corner, and all  
14 the professors and business colleges and  
15 agricultural economists and textbook authors and 02:46PM  
16 government in the other; is that a fair assessment?

17 A I don't think it is. I wouldn't place them in  
18 corners duking it out. So I don't like your  
19 metaphor.

20 Q I never meant to imply economists are 02:47PM  
21 belligerent or pugilistic.

22 A I just feel that, you know, some of the  
23 anti -- potential antitrust issues do not receive  
24 commensurate time in the training of economists and  
25 agricultural economists as do the benefits to a firm 02:47PM

1 of vertical integration.

2 Q I'm going to stop harping on your  
3 Congressional testimony here in just a second.  
4 There was one last thing you said that caught my  
5 attention and it was -- you stated that some global  
6 agribusiness firms now have economic and political  
7 power exceeding that of many governments. Do you  
8 believe there's some sort of a conspiracy out there  
9 in the world involving corporations?

02:47PM

10 A I don't have any evidence of a conspiracy.  
11 The basis for that statement, and I don't recall the  
12 exact source, but these have floated around, and  
13 just listing the different governments and  
14 businesses of the world, the top hundred in terms of  
15 what amounts to a GDP, and out of the top hundred,  
16 over 50 are corporations. That was the only point.

02:48PM

02:48PM

17 Q Okay. You published an article where you  
18 stated that giant agribusiness corporations make  
19 huge campaign contributions to politicians and that  
20 these contributions threaten American democracy.  
21 Does that sound correct?

02:48PM

22 A Yes.

23 Q Do you believe that Cargill is a giant  
24 agribusiness corporation?

25 A Yes.

02:48PM

1 Q Tyson?

2 A Yes.

3 Q Simmons Foods?

4 MR. ELROD: No.

5 A No. Cargill and Tyson, yes. 02:49PM

6 Q So somewhere in there you draw a line?

7 A Yes.

8 Q Do you believe that Cargill is a threat to  
9 democracy?

10 A Cargill itself, I have no reason to suspect 02:49PM  
11 that.

12 Q Do you believe that Tyson is a threat to  
13 democracy?

14 A Well, they've been convicted of bribing the  
15 secretary of agriculture, but aside from that, I 02:49PM  
16 don't see that they're a threat to democracy.

17 Q Sounds like democracy is working pretty good.  
18 True or false: The American economic systems seems  
19 to be slithering towards fascism?

20 A And I said that, and I'm going by the textbook 02:49PM  
21 economic definition of fascism, fascism, and not  
22 political definition, and it simply means the  
23 corporate control of government, and I did say and  
24 do mean that we're moving in that direction.

25 Q It's true since at least the early 1990's, 02:50PM

1 you've seen yourself as an advocate for poultry  
2 growers; is that right?

3 A I don't consider myself an advocate of  
4 anything other than competitive markets in a balance  
5 of market power, and that can go either way. 02:50PM

6 Recently it has gone, in my opinion, to favor the  
7 integrators over the growers, but it could easily  
8 swing the other way, as it has at times past with  
9 labor unions and so forth.

10 Q Do you believe that since the early 1990's 02:50PM  
11 that contract poultry growers have needed advocates?

12 A I've never even thought about it that way.

13 Q Just trying to determine if your beliefs now  
14 are consistent with testimony you gave in a  
15 deposition last year where you mentioned that you 02:51PM  
16 saw yourself as an advocate for a poultry --  
17 contract poultry growers, and if you don't now, I  
18 wondered if something had changed.

19 A Again, if I advocate anything, it is a balance  
20 of power in markets, cash markets, contracting or 02:51PM  
21 whatever. Economic -- basic economic theory  
22 indicates that when that balance of power gets out  
23 of whack either way, then one side loses and the  
24 other side gains. So to the extent that my analysis  
25 of contract poultry growers in the last ten years or 02:52PM

1 so shows that they're not making a competitive  
2 return for labor and capital and management and  
3 risk, then, yes, I'm speaking out on their behalf,  
4 but the roles could be reversed and I would change  
5 over.

02:52PM

6 Q I look forward to seeing that. If you're not  
7 an advocate for poultry growers, I take it you're  
8 not an advocate against poultry companies?

9 A No.

10 Q But you're no fan of Cargill, are you?

02:52PM

11 A I don't -- I know very little --

12 MR. RIGGS: Object to the form.

13 A I know very little about Cargill. As you know  
14 better than I do, it's the world's largest private  
15 corporation and not much is known about it, and I  
16 have nothing against the vertically integrated model  
17 of poultry production other than the fact that  
18 there's a disparity in bargaining power.

02:52PM

19 Q Do you recall your testimony about six months  
20 ago in the Schauer case? Am I pronouncing that  
21 correctly, Schauer?

02:53PM

22 A I think so.

23 Q That's the case where the defendant is  
24 Cargill; correct?

25 A The turkey -- the Gonzales Turkey, yes.

02:53PM

1 Q Yes, it is. You issued an expert report in  
2 that case not quite a year ago, and in that report  
3 I'll quote what you wrote. It is also my opinion  
4 that the growers and brooders should be entitled to  
5 recover significant punitive damages against  
6 Cargill. By the term significant, I mean that the  
7 punitive damages should be of such an amount that  
8 would deter a company of Cargill's huge financial  
9 resources from engaging in this type of malicious  
10 and exploitative conduct in the future.

02:53PM

02:54PM

11 A That is a case where they terminated all  
12 growers, and as I explained if not there, in other  
13 documents, I believe that some level of punitive  
14 damage when they're found guilty is necessary to  
15 deter that kind of behavior, and it's akin to the  
16 reasoning underlying treble damages in antitrust.  
17 You have to get a hurdle up to prevent undesirable  
18 behavior. If it's for actual damages only, then  
19 there's only some probability they'll get caught,  
20 and so that won't be an effective deterrent.

02:54PM

02:54PM

21 Q So, you know, outside your opinions as far as  
22 legal theory, it seems you have it in mind that with  
23 respect to the poultry growers, contract poultry  
24 growers --

25 A Uh-huh.

02:55PM

1 Q -- that Cargill engages in malicious and  
2 exploitive conduct?

3 A In that particular instance by getting growers  
4 to install foggers, which they paid part of the cost  
5 of, and others did serious upgrades of houses, and 02:55PM  
6 then they were terminated. All of them were  
7 terminated a year later. So in that particular  
8 case, I agree with that, but that is not a generic  
9 statement I would apply to the whole poultry  
10 industry. 02:55PM

11 Q Would you apply it to Cargill anywhere else  
12 outside of the facts of that particular case?

13 A Not with anything I have available to me.

14 Q Nothing you've seen to date?

15 A Nothing I have seen today. 02:56PM

16 Q Nothing you've been provided in those two big  
17 boxes of documents that were provided to you by  
18 counsel?

19 A No.

20 MR. TUCKER: Let's go ahead and change the 02:56PM  
21 tape out.

22 VIDEOGRAPHER: We're now off the Record.

23 The time is now 3:56 p.m. (sic)

24 (Following a short recess at 2:56 p.m.,

25 proceedings continued on the Record at 3:05 p.m.) 03:05PM

1 VIDEOGRAPHER: We are back on the Record.

2 The time is 3:05 p.m.

3 Q Now we're getting into the part, Doctor, where

4 I was somewhat competent and I actually brought more

5 than half a copy or one copy of a document so I

03:05PM

6 thought -- I hope I can help you a little bit with

7 that. I'll try to pass them over to you to refer to

8 them to help jog your memory as to what I'm talking

9 about. In this article I've passed out to you,

10 Restoring Economic Health to Contract Poultry

03:06PM

11 Production, that you authored, you characterize

12 poultry growers as, quote, serfs with a mortgage.

13 What is a serf?

14 A Fully this is a phrase the law professor, Neil

15 Harle started using. This basically means they're

03:06PM

16 completely at the mercy, not completely but close to

17 it, at the mercy of the integrator, and they do have

18 mortgages at the bank.

19 Q I believe in that article you equate every

20 contract grower who enters into a contract with a

03:06PM

21 poultry company as a servant of that company; is

22 that right?

23 A In a sense.

24 Q You do use the word servant.

25 A Okay.

03:06PM



1 Q Is that your position in the context of your  
2 affidavit as well?

3 A In large part they are.

4 Q You've argued for restoring the economic  
5 health of poultry production. Now, what do you mean 03:07PM  
6 by restoring it; is that the balance you've  
7 discussed today?

8 A That is the balance and as I -- the farm  
9 management specialists, who have worked with the  
10 poultry industry, noted a decline in the true 03:07PM  
11 economic return to contract production beginning in  
12 the early to mid 1990's, and I report the Alabama  
13 farm business records, which I have nothing to do  
14 with. I report some of them here and argue that for  
15 growers to have a competitive return on all of the 03:08PM  
16 factors that they bring to the deal, they need  
17 slightly higher pay.

18 Q I mean that's not the only thing that you  
19 believe is needed to restore this balance, is it?  
20 In reviewing your article, I know that you seemed to 03:08PM  
21 identify at least three things that needed to change  
22 to accomplish that goal.

23 A What are those three things?

24 Q I believe you've got them there on Page 6 of  
25 that article. First you say that the imbalance of 03:08PM

1 economic power is due to the government for failure  
2 to enforce antitrust legislation, which would cause  
3 me to ask, do you have a belief as to why antitrust  
4 legislation has not been enforced?

5 A I do not have a simple or even any explanation 03:08PM  
6 for it. The point here is that antitrust laws came  
7 on the books roughly a hundred years ago with real  
8 broad social intent, and over time that's gotten  
9 narrower and narrower down to economic efficiency  
10 narrowly defined. 03:09PM

11 Q Well, I'll make another suggestion, going  
12 through your writings, as to why you believe  
13 antitrust legislation has not been enforced the way  
14 you'd like to see it. In your article, Invisible  
15 Hands, you wrote, quote, one cannot help but wonder 03:09PM  
16 if these checks and balances are being compromised  
17 or lost due to the buying of politicians and the  
18 judiciary by corporations and the rich. I take it  
19 you were referring there to giant agribusiness  
20 corporations we talked about, like Cargill, and huge 03:09PM  
21 campaign contributions to politicians?

22 A Not specifically Cargill, but the whole  
23 corporate influence and lobbying effort that has  
24 increased dramatically in the last ten or fifteen  
25 years is of concern. 03:10PM

1 Q So it's not your opinion that Cargill has made  
2 contributions to politicians or the judiciary that  
3 would cause lack of enforcement of the federal  
4 antitrust laws?

5 A I have no evidence of that. I know -- well, I 03:10PM  
6 think Cargill has made campaign contributions. That  
7 can be tracked on various websites, and I've seen  
8 agribusiness numbers, just agribusiness category  
9 reported that's a pretty big number, but it's the  
10 generic effect. 03:10PM

11 Q Do you believe agribusinesses have made  
12 contributions to the Oklahoma Attorney General to  
13 persuade him to not enforce antitrust laws?

14 A I have no idea.

15 Q Just trying to get a sense of the extent how 03:10PM  
16 of pervasive you believe that agribusiness is.

17 A My comments were in the context of U.S.  
18 Department of Justice and USDA GIPSA and not  
19 reference to any state antitrust laws, if those  
20 exist or where those exist. I'm not familiar with 03:11PM  
21 any of the state ones other than limited familiarity  
22 with Texas antitrust law.

23 Q Do you believe that agribusiness has caused  
24 USDA to fail to act in ways that you believe it  
25 should to protect businesses such as contract 03:11PM

1 growers?

2 A There's a pretty strong feeling in the ag  
3 community that that is the case.

4 Q Is that your belief?

5 A From what I have seen, there is a definite 03:11PM  
6 influence that the top three -- you know, in the two  
7 or three levels of USDA.

8 Q And what influence do you see?

9 A It's just a general influence that USDA tends  
10 to side with giant agribusiness, things like country 03:12PM  
11 of origin label, COOL labeling and other related  
12 issues.

13 Q So I could add USDA to the corner with  
14 antitrust enforcement, textbook authors, agronomic  
15 economists and business schools as being folks who 03:12PM  
16 don't understand how to apply economic policy in the  
17 context of I guess society?

18 MR. RIGGS: Object to the form.

19 Q Is that right?

20 A I'm not making that reference with regard to 03:13PM  
21 economists in general in USDA. They're generally  
22 not in the top two or three levels, and there's  
23 certainly some highly competent economists in the  
24 economic research service of USDA.

25 Q And your article, Establishing Fairness in 03:13PM

1 Contract Poultry Production, a quote where you  
2 wrote, USDA, which collects and reports innumerable  
3 statistics --

4 A Wait, wait. I don't think that's the right  
5 article.

03:13PM

6 Q Establishing --

7 A Okay.

8 Q The fifth paragraph.

9 A Uh-huh.

10 Q USDA, which collects and reports innumerable  
11 statistics, including daily prices for many  
12 commodities, has rarely reported even the most basic  
13 economic information important to broiler producers.

03:14PM

14 They don't even report a single number showing  
15 average annual of pay for contract growers. Wonder  
16 why?

03:14PM

17 A That's a true statement.

18 Q If there are no economists in the top two or  
19 three levels at USDA, then surely they could be  
20 reporting these numbers if they wanted to?

03:14PM

21 A USDA reports morning and afternoon cattle and  
22 hog prices for even local markets, and there's  
23 nothing on pay for contract growers. That's my  
24 point.

25 Q Getting back to your article on Restoring

03:14PM

1 Economic Health where I mentioned there were a few  
2 things you saw that needed to change to restore the  
3 balance you talked about today --

4 A Uh-huh.

5 Q -- you also blame a lack of transparency in 03:15PM  
6 contracting for harming the economic health of  
7 poultry production, and I believe you talked about  
8 that sentence this morning, that the transparency  
9 you wanted to see was transparency in contracts; do  
10 I have that right? 03:15PM

11 A We can have a balance of power and  
12 transparency in a cash market or in a market for  
13 contracts, and either one of those can go either  
14 way. I do not have a problem with contract  
15 agriculture if there is a balance of power in the 03:15PM  
16 contracting process, especially when contracts are  
17 changed, base pay changed, specifications changed,  
18 requirements of grower -- for growers changed.  
19 That's all done at the initiation of the integrator,  
20 which is not a balance of power, and that concerns 03:16PM  
21 me.

22 Q Would you advocate making those contracts  
23 public so that potential growers could review them  
24 to determine if they thought this was a business  
25 they wanted to get into? 03:16PM

1 A That would certainly help.

2 Q Would you advocate it?

3 A Yes.

4 Q And what about making them public so that

5 growers could consider moving from one company to

03:16PM

6 another; is that another reason you would want to

7 make them public?

8 A Yes.

9 Q Would you ask Congress to pass a law requiring

10 that?

03:16PM

11 A I don't know that legislation is required for

12 that. That seems to get down to what you lawyers

13 call a bright line, and Congress doesn't generally

14 do bright lines, but there are other ways that that

15 could be achieved.

03:16PM

16 Q As far as these transparent contracts, what

17 about for cattle; would that restore balance in that

18 industry as well?

19 A The body of economic literature that applies

20 is called asymmetric information, and for markets to

03:17PM

21 be efficient and truly competitive, you have to have

22 a balance of information and not asymmetric

23 information, and this is a case of asymmetric

24 information where the integrators have much more

25 information than do the growers.

03:17PM

1 Q Is that the same case with cattle?

2 A It's different, but there is asymmetric  
3 information favoring the packer buyer over the  
4 cattlemen.

5 Q And I take it under your theories, increasing 03:17PM  
6 transparency by publicizing contracts could reduce  
7 that inequality that you see?

8 A Yes.

9 Q Same true with swine?

10 A Congress has required past legislation that 03:18PM  
11 requires some kind of posting of swine contracts, I  
12 don't know all the details, but to try to increase  
13 transparency for swine.

14 Q So you would have to acknowledge that  
15 transparency can be accomplished through 03:18PM  
16 legislation?

17 A It can be but normally Congress doesn't get  
18 involved in --

19 Q Well, they got involved in swine. It's a hop,  
20 skip and a species over to cattle or poultry? 03:18PM

21 A Yeah.

22 Q I'm just wondering how far to take that.  
23 Would the same be true with pro football players; if  
24 all their contracts were posted publicly for  
25 everyone to see, would there be a better market for 03:18PM



1 pro football players?

2 A That's a completely different kind of market  
3 that I don't want to get into.

4 Q What about Wal-Mart? I've read a quote of  
5 yours where you again quote that -- by Mr. Pinto and 03:19PM  
6 Hildred say that, quote, Wal-Mart is often held up  
7 as the model for successful supply chain management  
8 but that is -- that in some instances, Wal-Mart's  
9 behavior in purchasing from smaller suppliers  
10 approaches the dictatorial? 03:19PM

11 A At the time I agreed with that. I understand  
12 that that has changed somewhat in recent years.

13 Q Getting back to your Restoring Economic Health  
14 article, another one of the things you'd like to  
15 change to restore balance is to address what you 03:19PM  
16 call deceptive features in poultry contracts. Do  
17 you think Congress should pass a law telling  
18 contract poultry growers what kinds of contracts  
19 they can and can't sign?

20 A That would be a possibility, but it should be 03:20PM  
21 just in very broad terms.

22 Q In that Establishing Fairness article -- well,  
23 actually earlier today you testified that poultry  
24 growers don't have all the information they need to  
25 make a fully informed decision on whether they want 03:20PM

1 to be a poultry farmer; is that right?

2 A Correct.

3 Q Okay, and I think you fleshed that out in that

4 Establishing Fairness article. You said, quote, the

5 lack of objective public information on grower pay 03:20PM

6 and financial risk means that some uninformed,

7 gullible or overly optimistic individuals can be

8 lured into becoming contract growers.

9 A Yes.

10 Q The term you used to describe these people is 03:20PM

11 bubbas, isn't it?

12 A No, I didn't use that. Somebody else did.

13 Q You've adopted the term?

14 A I adopted that, yes.

15 Q I think when you were talking about bubba, 03:21PM

16 it's your Invisible Hand article. Quote, bubba only

17 need to look at income statistics for the upper 5 to

18 10 percent compared to the lower 40 percent to see

19 what is happening in America. The powerful

20 masquerading behind the invisible hand first picked 03:21PM

21 bubba's pockets. Now the hand has been clinched

22 into a corporate fist and bubba's way of life is

23 threatened whether he knows it or not. As I

24 understand your theory here, agricultural companies

25 abuse the free market to put bubba in jeopardy of 03:21PM

1 bankruptcy?

2 A As I mentioned earlier, the phrase free market  
3 has many, many different meanings, and it can range  
4 from one extreme where there are absolutely no  
5 regulations at all, and when some people use free 03:22PM  
6 market, that's what they mean. Others when they say  
7 free market, they mean a truly competitive market  
8 where there's a semblance of balance of power. So  
9 when you ask a question with the free market phrase,  
10 I don't know for sure what you mean. 03:22PM

11 Q Well, then I could ask it a different way. Is  
12 it your position that those bubba poultry farmers  
13 out there don't know what they're doing when they  
14 enter into contracts to be contract growers and  
15 somebody ought to stop them from doing it? 03:22PM

16 A I'm not saying they should be stopped from  
17 doing it. They should go in with their eyes open  
18 about the true economic return to contract poultry  
19 production, and there's very little information on  
20 that. 03:22PM

21 Q At the end of your Restoring Economic Health  
22 article, you say that economic viability would be  
23 restored to contract production if producers  
24 received only one penny per pound more. I must have  
25 missed it this morning. You probably mentioned at 03:23PM

1 some point what the average price per pound bird is  
2 received by a poultry grower in the IRW.

3 A I don't think it was mentioned, but I have yet  
4 to see Agri Stats for all of these companies.

5 Q Would you like to use the number we talked 03:23PM  
6 about in the article?

7 A Five to six cents will work now.

8 Q Okay. So if it's five cents a pound --

9 A Uh-huh.

10 Q -- and you want a one cent increase, that's 03:23PM  
11 about 20 percent. Would you lobby Congress to  
12 impose a 20 percent tax on poultry to get a bonus to  
13 poultry growers or something?

14 A I don't lobby Congress.

15 Q You just testify to Congress. I'm sorry. 03:24PM

16 A I testify. I do not engage in those other  
17 activities.

18 Q But you are aware that you're asking for a 20  
19 percent increase there, not just one cent?

20 A That is the upper limit. Yes, I'm aware of 03:24PM  
21 that. It takes a half a penny to a penny added to  
22 what those growers who have participated, the  
23 poultry growers who have participated in the Alabama  
24 farm business record system with accounting done  
25 properly for management, not for tax purposes. It 03:24PM

1 takes that much before they get a competitive return  
2 on their labor of 6 or 7 or \$8 an hour and a  
3 competitive return on management and risk.

4 Q And you've got an opinion in this case as far  
5 as how much a pound it would cost to transport all 03:24PM  
6 litter out of the IRW?

7 A Yes.

8 Q And as I understand your affidavit, you'd like  
9 to pass that cost on to consumers across the  
10 country? 03:25PM

11 A Like to is not the appropriate word.

12 Q Propose, would that work?

13 A No.

14 Q Suggest?

15 A In competitive markets, well, and even in 03:25PM  
16 non-competitive markets, cost increases are passed  
17 on in part or in total to final consumers. That's a  
18 reality. It's not something I wish but it's  
19 reality.

20 Q You testified earlier today that those final 03:25PM  
21 consumers you perceive being consumers in the  
22 country, is that right, not just consumers, say, in  
23 Tulsa County?

24 A Yes.

25 Q All right. Do you believe -- is it your 03:25PM

1 opinion that Oklahoma's Attorney General should be  
2 setting the price of chicken at the grocery store at  
3 markets across the country?

4 A No.

5 MR. TUCKER: That's all I have. Thank you. 03:26PM

6 DIRECT EXAMINATION

7 BY MR. BOND:

8 Q Dr. Taylor, my name is Michael Bond and I  
9 represent Tyson Foods, Tyson Chicken, Tyson Poultry  
10 and Cobb-Vantress in this case. We've been going 03:27PM  
11 for a little while. If you want a break, let me  
12 know. You don't have to wait for the tape change,  
13 you know, if you need anything, but I'm going to  
14 jump around a little bit. It's kind of part of  
15 being in third or fourth or fifth position in these 03:27PM  
16 types of things, but I do -- I want to start with  
17 Paragraph 25 of your affidavit, which is Exhibit 1  
18 in this deposition, and I don't entirely understand  
19 the calculation but I think if I read back through  
20 your testimony, I can probably pick most of it up. 03:27PM

21 A Okay.

22 Q I do want to make a few things clear. This  
23 average of only one to two pennies per person per  
24 year, that is a nationwide increase; right?

25 A I'll try to explain it again. I calculated a 03:28PM

1 cost of transporting litter a hundred miles out of  
2 the IRW and then apply that to all consumers  
3 nationally. So I averaged it out nationally.

4 Q Right, and I know that that number is one of  
5 the critical numbers in your formula is the number  
6 of houses?

03:28PM

7 A Right.

8 Q And we have an incorrect number that you've  
9 used; right?

10 A That's correct.

03:28PM

11 Q Okay. Are you going to change that prior to  
12 the preliminary injunction hearing or not?

13 A I don't have any plan to. It can be changed  
14 by plugging in the appropriate number and scaling,  
15 proportionately changing.

03:28PM

16 Q Keep it the way you've done it right now and  
17 for purposes of this exercise, give me a dollar  
18 figure. Tell me how much that is in dollars.

19 A In dollars?

20 Q Yes. I have a calculator if you need it.

03:28PM

21 A No. I'm looking for maybe another document,  
22 the one with all -- this one.

23 MR. RIGGS: I object to the form simply  
24 because I don't understand the question. So if you  
25 do --

03:29PM

1 Q Do you understand my question? How much is  
2 one penny?

3 A You want the aggregate number.

4 Q I want to know how much it cost.

5 A Okay. It would cost -- 03:29PM

6 Q Next year how much is --

7 A There are different ways of calculating it.  
8 How much would expenditures on chicken or poultry  
9 products go up, and let me get to the right sheet.

10 Q Actually I don't even care that much about 03:29PM  
11 that. What I care about is using the formulas that  
12 you've used there, tell me how much money it cost to  
13 haul all the poultry litter out of the Illinois  
14 River watershed.

15 MR. RIGGS: A hundred miles? 03:30PM

16 MR. BOND: Yeah.

17 A Well, you mean based on this estimate I have  
18 of pounds produced in the watershed, which may be  
19 high but --

20 Q Based on whatever you used to create your 03:30PM  
21 affidavit.

22 A And then it is -- to transport all of it, it  
23 is -- it's .0036, a third of a cent times 1.5  
24 billion. I can't do that one in my head.

25 Q I can't either. 03:31PM



1 A Approximately five and a half million.

2 Q Okay, and that's for all of it?

3 A For all of it, right.

4 Q And you've done some calculations on half;

5 right?

03:31PM

6 A Right, which would be half of that.

7 Q Which is --

8 A 2.75 million.

9 Q Okay. In your paragraph -- and I'm going to

10 say it assumes that that cost is going to be spread

03:31PM

11 out border to border and passed through on to the

12 retail level of the sale of the chicken.

13 A Okay.

14 Q I know there was some discussion about that

15 before and you said that's a reality because that's

03:32PM

16 what happens?

17 A That part or all of it is transferred by the

18 market.

19 Q Okay. Have you reviewed any grower contracts

20 for growers in the Illinois River watershed?

03:32PM

21 A Yes.

22 Q Okay, and do you recall what those contracts

23 say about poultry litter?

24 A The contracts state that it's the

25 responsibility of the grower generally.

03:32PM

1 Q Right. So this cost right here --

2 A Uh-huh.

3 Q -- could very well be borne by the growers  
4 pursuant to the contract, the reality in place in  
5 this case; correct?

03:32PM

6 A Uh-huh. It doesn't have to be because the  
7 integrators can simply increase base pay if they're  
8 going to force the growers to pay the cost of it.

9 Q Who's going to force the grower?

10 A The integrator.

03:33PM

11 Q What's the integrator going to force them to  
12 do?

13 A Can force them to haul it out of the  
14 watershed.

15 Q Hypothetically?

03:33PM

16 A Or to bring it to a central station for it to  
17 be hauled out or --

18 Q But it's not the integrators asking for this;  
19 it's the attorney general of Oklahoma; correct?

20 A Correct.

03:33PM

21 Q So hypothetically let's say that this cost is  
22 going to -- I mean nothing is going to change;  
23 nothing will change. The contracts will work the  
24 same way they do right now.

25 A Okay.

03:33PM

1 Q Who would bear this cost?

2 A Under the assumptions you've made, the growers  
3 would.

4 Q Right, and I don't know if you have the  
5 information available in front of you, but how much 03:33PM  
6 would that cost a grower in the Illinois River  
7 watershed?

8 A The 5.5 million?

9 Q Yeah.

10 A And if we assume that there are 2,500 houses, 03:34PM  
11 it would be \$2,200 per house per year.

12 Q You already say that they're -- I forget your  
13 exact terminology, but they're not getting a  
14 competitive return; correct?

15 A That's right. 03:34PM

16 Q And it seems to me that you want -- one of the  
17 things you would like to have accomplished in the  
18 poultry business is for growers to have a  
19 competitive return under your analysis; correct?

20 A Correct. 03:34PM

21 Q How are they going to get a competitive return  
22 if you do this?

23 A With the integrator increasing base pay.

24 Q What if that doesn't happen, sir?

25 A Then the grower will bear the cost of it. 03:34PM

1 Q You'll be further from achieving the goal that  
2 you've been trying to achieve?

3 A Under those assumptions.

4 Q In preparing for your work in this case  
5 specifically related to the PI, have you talked to 03:35PM  
6 any grower who is a poultry farmer in the Illinois  
7 River watershed?

8 A As far as I know, I never have. You know, I  
9 go to meetings here and there around the country and  
10 talk to farmers and ranchers, and there's a chance 03:35PM  
11 one of them attended that, but I have not had a  
12 one-on-one meeting with any grower.

13 Q And what were you hired to do with respect to  
14 this PI motion?

15 A I was asked to describe the industry and make 03:35PM  
16 a preliminary estimate of the cost of transporting  
17 litter out of the watershed.

18 Q Okay. If I read Paragraph 6 into the Record,  
19 it says that I have been retained by the Oklahoma  
20 Attorney General to evaluate the relationship 03:35PM  
21 between poultry growers and defendant poultry  
22 companies and to assess the economics of the poultry  
23 industry, including the cost of safely removing  
24 poultry waste, including used litter and dead birds  
25 from the Illinois River watershed. How do you 03:36PM

1 evaluate the relationship between one party to a  
2 contract and another party to a contract without  
3 ever talking to any of them?

4 A Throughout the industry the growers are not  
5 allowed to negotiate the contracts. It's a very  
6 one-sided arrangement.

03:36PM

7 Q But, see, we are talking about a specific  
8 geographic area.

9 A Yes.

10 Q And we are talking about specific companies.

03:36PM

11 A Uh-huh.

12 Q And they have contracts with specific people?

13 A Yes.

14 Q Okay, and you haven't talked to anyone at  
15 either one of these, either one of these parties;  
16 correct?

03:36PM

17 A Correct.

18 Q Okay. You haven't gone out to a grower's farm  
19 and asked them what they do in the Illinois River  
20 watershed with respect to their relationship  
21 between, for example, my clients on a day-to-day  
22 basis, have you?

03:37PM

23 A I have not.

24 Q Okay. You haven't asked them what their  
25 relationship is like with their service tech, have

03:37PM

1 you?

2 A I have not.

3 Q You haven't asked them what the relationship  
4 is like with respect to recommendations and  
5 suggestions of farm practices, have you?

03:37PM

6 A No.

7 Q Okay. You don't know whether or not growers  
8 who have contracts with Tyson Chicken, Tyson Poultry  
9 and Cobb actually listen to the service techs when  
10 they tell them something, do you?

03:37PM

11 A Not in this case, no.

12 Q Wouldn't a poultry grower be the best person  
13 to describe the relationship they have with the  
14 person they have a contract with?

15 A My role was to describe the overall industry  
16 and not those one-on-one relationships, but  
17 certainly the growers know about their individual  
18 relationship with their integrator.

03:37PM

19 Q All right. Would you agree with me that if  
20 poultry litter was no longer able to touch the  
21 ground in the Illinois River watershed, that its  
22 value would be zero in the Illinois River watershed  
23 from an economic standpoint?

03:38PM

24 A If it was not allowed to touch the ground?

25 Q Right.

03:38PM

1 A There are options, like burning it, where it  
2 wouldn't have to strictly touch the ground but --

3 Q Right.

4 A -- certainly if it's not -- if they do not  
5 allow it to be applied to agricultural land, then,  
6 you know, it has no gross value, but even applied,  
7 the net value may be negative --

03:39PM

8 Q Okay.

9 A -- or zero.

10 Q Do you know that some poultry farmers utilize  
11 poultry litter to further other farming operations  
12 on their land?

03:39PM

13 A Yes.

14 Q Okay. If that has no -- and they use it as a  
15 fertilizer; right?

03:39PM

16 A There are other soil properties of it but  
17 essentially --

18 Q Or as a soil amendment or fertilizer; right?

19 A Right.

20 Q If they can't use it anymore, again how is  
21 that going to help a poultry farmer achieve some  
22 kind of economic stability for their farming  
23 operations as a whole?

03:39PM

24 A If they've been overusing it, it will help  
25 them.

03:40PM

1 Q That's not the question. Answer the question.  
2 Can't use it. How is that going to further this  
3 goal of economic return for a poultry farmer?

4 A Given the assumptions you've stated that the  
5 integrator won't increase the base pay, it won't. 03:40PM

6 Q Well, let's say they increase the base pay.

7 A Uh-huh.

8 Q He still can't use poultry litter on his farm  
9 to grow hay or to further the growth of grass for  
10 cows and calves to graze. How does this help him 03:40PM  
11 with the economic return of his farm?

12 A Well, if the base pay goes up enough, it can  
13 more than offset the downside with the cattle  
14 operation.

15 Q Have you actually done that type of numbers 03:40PM  
16 analysis with fertilizer values and the value of  
17 litter and the cost of fertilizer, or are you just  
18 assuming that?

19 A I've done some way back, not recently.

20 Q Have you done it here in the Illinois River 03:41PM  
21 watershed?

22 A Not yet. Haven't been asked to.

23 Q Now, I'm going to start jumping around a  
24 little bit. When exactly were you retained in this  
25 case? 03:41PM



1 A I can't remember the date that David Riggs  
2 first called me. It was maybe a year ago, and we  
3 had a brief conversation with no real commitment  
4 either way on my part, and it was some time in  
5 summer or late summer. I know the first hours I  
6 logged I think were in August.

03:41PM

7 Q Of 2007?

8 A Yes.

9 Q Are you being paid for your time in this case?

10 A Yes.

03:42PM

11 Q Describe the compensation system for you to be  
12 paid in this case.

13 A 150 an hour for research and 300 an hour for  
14 depositions or trial testimony or hearings, plus  
15 travel expenses.

03:42PM

16 Q How much have you billed?

17 A Slightly over 100 hours, including travel  
18 time.

19 Q How much of that was research; all of it?

20 A All of it until today.

03:42PM

21 Q How much of that has been paid?

22 A I think I just mailed out the December invoice  
23 a few days ago. I haven't been paid for that, but  
24 I've been paid for all before that.

25 Q Okay, and that's the only manner in which

03:42PM

1 you're compensated in this case, by the hour?

2 A Yes.

3 Q Okay. You talked a little bit about the  
4 tournament system of pay.

5 A Yes. 03:43PM

6 Q You are aware that the tournament system of  
7 pay with respect to Tyson growers is only applied to  
8 broilers; right?

9 A Only applied to -- as far as I know, Tyson  
10 only has broilers in the watershed. 03:43PM

11 Q And you've reviewed contracts?

12 A Not every single one of them but I've gone  
13 through quite a few.

14 Q Okay. Did you review any contracts from  
15 Cobb-Vantress? 03:43PM

16 A I do not recall that.

17 Q Were you provided any contracts that said  
18 Cobb-Vantress on the top?

19 A I don't recall seeing any.

20 Q Did you actually look at everything in these  
21 boxes? 03:44PM

22 A A lot of this material I came across in my  
23 research and thought that it might have relevance at  
24 some point in the future and I either printed it or  
25 saved an electronic version and you have everything 03:44PM

1 that I've prepared, that I've assembled as part of  
2 this project broadly defined.

3 Q Okay. So I mean have you actually considered  
4 every document that was produced to me or are there  
5 some things in there you have but you really haven't 03:44PM  
6 looked at?

7 A Just some things I have that I thought might  
8 be relevant to a full report later on and so it's  
9 there.

10 Q Okay. The other thing that was noted when 03:44PM  
11 documents were produced to me in this case with  
12 respect to you was that you have reviewed deposition  
13 transcripts in this case?

14 A I have reviewed a few. There are Lair,  
15 Houchins and maybe Murphy that I reviewed quite some 03:45PM  
16 time ago, and at about the time the document  
17 production request came in, I received some other --  
18 quite a few other deposition transcripts, which I  
19 have not looked at, and I have received some  
20 transcripts of grower depositions recently, which I 03:45PM  
21 have not had a chance to look at.

22 Q Okay. So is it fair to say if there's  
23 something in there that you've at least just  
24 described that you haven't reviewed yet, that it  
25 wasn't taken into account with respect to your 03:46PM

1 affidavit? That's a horrible question. It's not  
2 even worth asking. Has your testimony or has  
3 your -- have you ever been excluded from testifying  
4 at trial?

5 A I have not had anything excluded as far as I 03:46PM  
6 know.

7 Q Okay. We talked a lot about the balancing of  
8 power between the integrators and growers, and I'm  
9 still a little confused as to what you mean by that,  
10 but one thing that I'm taking from it is that you 03:47PM  
11 feel like growers should have more information?

12 A They should have more information and more say  
13 in changes in contract terms.

14 Q What terms do you want to change?

15 A Base pay, length of loan. 03:47PM

16 Q Length of what?

17 A I said loan. Length of the contract.

18 Q Base pay?

19 A Uh-huh.

20 Q How would you propose that base pay be 03:47PM  
21 changed?

22 A In the textbook case of monopsony, that's  
23 where there is a single buyer; polyopsony is a few  
24 buyers. The standard theoretical model indicates  
25 that price is less than it would be in a com -- 03:47PM

1 truly competitive market, and so when I translate  
2 that into base pay in a contract, I'm saying it is  
3 the integrator that decides what that base pay will  
4 be and when it's changed, and the growers need some  
5 say in that.

03:48PM

6 Q Base pay isn't the only way that a grower is  
7 compensated; correct?

8 A There's a fuel allowance.

9 Q Adjustments and incentives and bonuses?

10 A Yes, and we've been over that.

03:48PM

11 Q Tell me, for example, how is a Cobb grower  
12 paid in the Illinois River watershed. How are they  
13 paid? A grower has a contract with Cobb-Vantress.  
14 How are they compensated?

15 A I've already told you I have not looked, that  
16 I can recall, at a Cobb-Vantress contract.

03:48PM

17 Q Okay, and the point I'm trying to make with  
18 you is that we are talking about a very specific  
19 geographic region that have real people in it that  
20 have contracts with real companies --

03:48PM

21 A Right.

22 Q -- that are different, but you haven't looked  
23 at any of these things; correct?

24 MR. RIGGS: Object to the form.

25 A I have not looked at one for Cobb-Vantress. I

03:49PM

1 have looked at some of the contracts, but I have not  
2 taken the time to go down and get each and every one  
3 of them and make a detailed comparison. I know the  
4 ones I've looked at have a tournament system of some  
5 sort and incentives for a grower.

03:49PM

6 Q Okay, and not all growers are paid exactly the  
7 same, are they, because of that incentive system?

8 A Well, within a complex which is defined by the  
9 grower -- by the integrator, then all of the growers  
10 for that integrator generally have the same contract  
11 with the same base pay with the possibility of  
12 differential base pay due to houses and equipment.

03:49PM

13 Q And performance?

14 A Tunnel ventilation versus old. The base pay  
15 is not influenced by -- not factored into  
16 performance. It's deviations from the base pay is  
17 where the tournament comes about and details about  
18 how the comparison is made within the tournament,  
19 but the base pay applies generally to the average  
20 grower with an average flock in the tournament.

03:50PM

21 Q Base pay?

22 A Base pay.

23 Q That's what it is?

24 A That's right.

25 Q Earlier you testified and you said that with

03:50PM

1 respect to responsibility for poultry litter, that  
2 has -- I think I've got you quoted correctly --  
3 pushed the -- I think integrators have pushed that  
4 burden onto growers for litter. Do you recall  
5 saying something sort of like that?

03:51PM

6 A Shifting of risk associated with it.

7 Q So you don't consider litter to be a burden?

8 A It just depends. You know, we've gone over it  
9 has some value in agricultural uses --

10 Q Uh-huh.

03:51PM

11 A -- if the nutrient levels are below some  
12 threshold level.

13 Q Or, for example --

14 A We've been over, you know, how that value can  
15 be calculated or how it should be calculated and --

03:51PM

16 Q I mean are you talking about a specific  
17 poultry farm or are you talking about generally or  
18 are you talking nationwide or are you talking about  
19 the Illinois River watershed? I'm a little confused  
20 at that characterization.

03:52PM

21 A Within the watershed, let's talk about an  
22 individual grower. We have the regulations that  
23 apply to that grower and the grower's own economic  
24 situation, and that is a grower-type issue, but in  
25 terms of this whole area or whole watershed, it's

03:52PM

1 the integrator who decides how many growers will be  
2 in that watershed and, therefore, it's the  
3 integrator who decides where that litter will be  
4 generated, whether it's in the watershed or outside  
5 the watershed in the aggregate.

03:52PM

6 Q But the integrator doesn't decide where that  
7 poultry litter goes; you would agree with that?

8 A The integrator decides where the houses will  
9 be where it's generated, but the integrator as far  
10 as I know does not decide where that goes within the  
11 watershed.

03:53PM

12 Q Right, and it's your understanding that an  
13 integrator decides where a poultry house goes?

14 A They must approve the location of it and the  
15 specifications.

03:53PM

16 Q Well, that's different. That's different than  
17 picking where the house goes.

18 A Well, we've talked about small farms. If they  
19 allow Farmer A to construct houses, then they've  
20 narrowed that location down to a pretty small area.

03:53PM

21 Q But Farmer A would come to them and say I'd  
22 like to start growing chickens?

23 A Right, and they say yes or no.

24 Q Yeah. They didn't pick the location; the  
25 farmer owned the land.

03:53PM



1 A When they said yes, they decided in the  
2 aggregate how much litter is generated in the  
3 watershed.

4 Q Okay. I may be almost done.

5 MR. BOND: I don't have any more questions. 03:54PM  
6 Thank you.

7 VIDEOGRAPHER: We're now off the Record.  
8 The time is 3:54 p.m.

9 (Following a short recess at 3:54 p.m.,  
10 proceedings continued on the Record at 4:05 p.m.) 04:03PM

11 VIDEOGRAPHER: We are back on the Record.  
12 The time is 4:05 p.m.

13 DIRECT EXAMINATION

14 BY MR. GRAVES:

15 Q Doctor, my name is James Graves. I represent 04:05PM  
16 George's, Inc., and George's Farms, Inc. I'm also  
17 going to skip around because I'm fourth in the  
18 batting order.

19 A Okay.

20 Q And I'm just kind of picking up a few things 04:05PM  
21 that occurred to me as we went through your  
22 testimony. I think I know the answer to this, but  
23 did you do anything to evaluate the relationship  
24 between George's and growers under contract with  
25 George's in the IRW? 04:05PM

1 A Nothing specific.

2 Q And did you do anything to evaluate the  
3 economics of George's poultry business in the IRW?

4 A In terms of George's or the integrator -- I  
5 didn't do either one but --

04:06PM

6 Q In terms of George's?

7 A I do not have any financial records of  
8 George's.

9 Q And did you look at any contracts or other  
10 information that was specific to George's?

04:06PM

11 A I kind of scanned the contracts.

12 Q The George's contracts?

13 A I think so.

14 Q Okay, and I think you've already testified  
15 that you didn't do anything other than just kind of  
16 reading through them?

04:06PM

17 A Right.

18 Q Do you know whether it was a broiler contract  
19 that you reviewed or was it some other contracts,  
20 such as breeder or pullet contracts?

04:06PM

21 A I don't remember that. I know generally  
22 breeder and pullet contracts are different from  
23 broiler contracts somewhat.

24 Q How so?

25 A The way the pay is structured is different,

04:06PM

1 different incentive system.

2 Q And so would it be accurate to state that your  
3 affidavit relates to broiler contracts where you  
4 make comments about how the contract is set up when  
5 you use the word tournament system and things like 04:07PM  
6 that?

7 A Most of my comments have applied to broiler  
8 tournaments. They're similar, almost all of them  
9 that I have seen, small differences in the  
10 tournament, and whether they use a simple average, a 04:07PM  
11 median or weighted average and, you know, details  
12 like that, but the same general type of tournament.

13 Q But as we sit here today, you don't know what  
14 George's grower pay is in the IRW or how its  
15 specific system is set up or how it compares to any 04:07PM  
16 of the other defendants in the case?

17 A No. I have requested Agri Stats through the  
18 plaintiff attorneys but I have not seen any of  
19 those.

20 Q Okay, and do you have any specific knowledge 04:07PM  
21 as we sit here today about George's breeder or  
22 pullet contracts and whether they are a tournament,  
23 as you classified it, or some other type of system?

24 A I do not have specific knowledge about  
25 George's, but breeder and pullet in general have 04:08PM

1 economic incentive built in for the growers or  
2 whoever is raising the birds to be good managers,  
3 but it's not exactly the same as the standard  
4 broiler tournament.

5 Q Okay. Again, you don't -- just to make sure I 04:08PM  
6 understood your answer, you don't know whether you  
7 reviewed any George's breeder or pullet contracts  
8 for the IRW?

9 A I do not recall any specifics.

10 Q Do you know or recall whether you saw any 04:08PM  
11 George's cash flow statements or other what you've  
12 classified as recruitment, grower recruitment  
13 information as a part of what you reviewed?

14 A I do not recall seeing any cash flow  
15 projections or proforma statements in this 04:09PM  
16 particular litigation.

17 Q As you sit here now, do you know or have any  
18 calculations with regard to breeder or pullet litter  
19 in the IRW; is that part of your calculation that  
20 you walked through with Mr. Elrod earlier today or 04:09PM  
21 were you only considering broiler production?

22 A I just applied it to broiler production. I  
23 anticipated -- anticipate that when we get to full  
24 report after the injunctive relief, then I'll do  
25 separate calculations for turkeys and layers and 04:09PM

1 broilers and so forth, but so far I have not.

2 Q Do you understand that there are -- that there  
3 is poultry litter generated from operations other  
4 than broiler operations in the IRW?

5 A Turkey and layers. 04:10PM

6 Q And as I understand it, you haven't included  
7 that in your calculation but there would be a cost  
8 associated with transporting that type of litter out  
9 as well, would there not?

10 A The way I did my calculation is to just assume 04:10PM  
11 that all of the houses were broiler houses and apply  
12 the Tabler and Berry numbers to that. To the extent  
13 the litter and waste produced per pound of turkeys  
14 or whatever is different from that, that would  
15 slightly distort my total, but it's primarily 04:10PM  
16 broiler operations in the watershed.

17 Q For example, do you know whether the moisture  
18 content of breeder or pullet litter is the same as  
19 broiler litter?

20 A I know there is -- 04:11PM

21 Q Whether the weight would be different?

22 A I know there is data available on that. I  
23 don't recall any of the numbers.

24 Q And you didn't use those in your calculations?

25 A Not in this calculation. 04:11PM

1 Q Or in any calculation done for this case?

2 A No. I took the Tabler and Berry numbers at  
3 face value.

4 Q And those dealt with broiler litter?

5 A Yes. 04:11PM

6 Q Do you know, as you sit here today, what  
7 George's profit margin on a bird raised in the IRW  
8 is?

9 A Since I've seen none of the financials, no.

10 Q What about with respect to an IRW grower under 04:11PM  
11 contract with George's, what their profit margin on  
12 a bird that they raise in the IRW would be?

13 A No information.

14 Q Are your opinions with regard to -- about the  
15 control aspect of the tournament-style contract that 04:11PM  
16 you give in your affidavit, are those also really  
17 primarily dealing with broiler, your opinions about  
18 broiler contracts?

19 A My opinions about control apply to all of  
20 these, but as I have indicated, since it's primarily 04:12PM  
21 broilers produced, that's what I focused on in this  
22 limited assignment.

23 Q Your criticisms today in your testimony about  
24 the -- about vertical integration primarily related  
25 to grower pay in the tournament contract as I 04:12PM

1 understood it?

2 A It's not so much the tournament. It is the  
3 level of base pay that's not sufficiently high for  
4 the grower to earn a competitive return for all of  
5 the factors I mentioned several times. As far as I  
6 know, there is no public information on actual  
7 returns for turkey operations or for layer  
8 operations nationally.

04:12PM

9 Q So those would not be included in your  
10 opinions then?

04:13PM

11 A I assume that they're similar.

12 Q Do you know what George's base pay is for its  
13 breeder or pullet contracts?

14 A I do not.

15 Q Or how those contracts are set up or  
16 negotiated?

04:13PM

17 A I assume it's like broiler contracts. There's  
18 no real negotiation. I do not know the base pay or  
19 the specific tournament that George's has.

20 Q Or whether --

04:13PM

21 A The tournament or the incentive, however you  
22 want to word it.

23 Q You also spoke with Mr. Elrod or testified  
24 about the -- about economic accounting and some  
25 elements that you listed out.

04:14PM

1 A Yes.

2 Q And in fairness to your testimony, you stated  
3 that you were aggregating 20 or so elements into a  
4 few or a smaller number; correct?

5 A Well, you can itemize all of the different 04:14PM  
6 costs and --

7 Q Well, I'll tell you the ones I wrote down or  
8 the ones I heard you state. You said out-of-pocket  
9 expenses?

10 A That's a generic category. 04:14PM

11 Q You said loans, depreciation,  
12 labor/management?

13 A Uh-huh.

14 Q Market return on equity and risk. Taking  
15 out-of-pocket expenses, did you do any studies or 04:14PM  
16 review of any publicly available information for  
17 what the out-of-pocket expenses are for a typical  
18 grower in the IRW?

19 A There's no such information to my knowledge.

20 Q So is that a no? 04:15PM

21 A That's a no.

22 Q With regard to loans, did you contact any  
23 banks or any other growers to try to obtain any type  
24 of information about what growers would expect or  
25 what they were financing with regard to their 04:15PM



1 poultry farms?

2 A No.

3 Q With regard to depreciation, is there any  
4 publicly available information for you to be able to  
5 obtain that type of information for growers in the 04:15PM  
6 IRW?

7 A The Oklahoma State cost and returns budget has  
8 a way of calculating depreciation that's generally  
9 just straight line economic depreciation, in their  
10 case on a house and all of the equipment, and 04:15PM  
11 there's other information publicly available. Well,  
12 some that I have anyway but not for --

13 Q Did you use any of that for your affidavit?

14 A I used general knowledge of economic  
15 depreciation for a house and for house equipment. 04:16PM

16 Q Was it the information that you just referred  
17 to for the IRW area?

18 A Well, I stated that wood frame houses almost  
19 anywhere in the United States have a 20 to 30-year  
20 economic life. It's longer for metal frames, and 04:16PM  
21 generally the equipment in the house has a 10 to  
22 15-year economic life, and economists -- there are  
23 really complex ways for accounting for that, but  
24 generally they take the shortcut and use straight  
25 line economic depreciation, not tax depreciation. 04:16PM

1 Q With regard to the labor/management component,  
2 where do you look to value that or did you?

3 A The labor --

4 Q I'm talking about the IRW to be specific.

5 A Well, before this litigation I had obtained 04:16PM  
6 some wage rate information for Oklahoma by counties  
7 and even -- it's detailed by type of job and, you  
8 know, the ag stuff, it's about the same as it is in  
9 poultry areas of Alabama or Georgia. It's going to  
10 be 7, 8, \$9 an hour, and I didn't get that as part 04:17PM  
11 of this. I'm aware of it.

12 Q Okay.

13 A The management, as I've mentioned, being on  
14 call 24-7 is extremely difficult to place a value on  
15 that, and I have no way of doing it. 04:17PM

16 Q Okay. With regard to market return on equity,  
17 what is that?

18 A Well --

19 Q Just define that.

20 A Let's say you have a new grower that had lots 04:17PM  
21 of cash around and just paid cash for all of it.  
22 Then you would expect to get a return on that equity  
23 that they have in the place.

24 Q And how would you calculate or go about  
25 calculating that value for a grower in the IRW? 04:18PM

1 A Use a market rate of return. The Alabama Farm  
2 Business Analysis Association I think uses a 9  
3 percent return but that includes the risk component.  
4 If you just want to get the interest component, the  
5 easiest way is to get a bank CD, which is insured  
6 and has no risk.

04:18PM

7 Q Did you gather any of that information for the  
8 IRW?

9 A Well, I know what they are within a certain  
10 range.

04:18PM

11 Q Did you utilize that in your -- reaching your  
12 opinions here?

13 A Not here. I just described the industry and  
14 made the calculations, the preliminary calculations  
15 on hauling litter out.

04:18PM

16 Q The calculations that have the wrong number of  
17 houses and don't have specific moisture or breeder  
18 or pullet information?

19 A Correct.

20 Q With regard to the risk component, first of  
21 all, define that for me as well.

04:19PM

22 A Well, this morning I think I discussed risk at  
23 length. There are many kinds of risk a grower  
24 faces. One of those is the integrator simply  
25 cutting him off and there not being another

04:19PM

1 integrator to pick him up. There is production risk  
2 that is determined in part by -- may be determined  
3 in part by growers' activities and also determined  
4 by integrators. There's risk in terms of the  
5 integrator increasing or decreasing days out. There  
6 is the price risk that comes through the contract,  
7 even though there's a stated base price. So there  
8 are many elements of risk.

04:19PM

9 Q And how do you calculate that for a grower in  
10 the IRW?

04:20PM

11 A The way it is generally done in the field of  
12 agricultural economics is through an interest rate  
13 used to discount future returns and that has a risk  
14 component and an inflation component. I think I  
15 mentioned this morning that the task force handbook  
16 recommends a real discount rate, taking the  
17 inflation out of 3 to 6 percent for most long-lived  
18 assets in farming.

04:20PM

19 Q And did you do that analysis for your opinions  
20 in this affidavit?

04:20PM

21 A I haven't done any detailed profitability  
22 analyses.

23 Q With regard to risk, are there any risks that  
24 integrators in the vertical integration model that  
25 you've described, are there any risks that the

04:21PM

1 integrator protects the growers from being subjected  
2 to?

3 A Comparing the contract grower vertically  
4 integrated model to a cash market, as I mentioned  
5 this morning, the risks are not eliminated. The  
6 risks are changed.

04:21PM

7 Q Is a grower in the vertically integrated  
8 system subjected to the price fluctuations with  
9 regard to feed or feed ingredients in the contracts  
10 that you reviewed?

04:21PM

11 A To feed or --

12 Q The cost of feed or feed ingredients?

13 A Feed ingredients, not directly. There's an  
14 indirect effect directly in the tournament. They  
15 used -- they generally use a fixed price for feed  
16 and chicks and so forth.

04:21PM

17 Q Are they protected from having to find a  
18 reliable supplier of chicks or feed or feed  
19 ingredients or transport for any of those items?

20 A Are they protected from it?

04:22PM

21 Q If I'm a grower out there who is not  
22 contracted with an integrator, I've got to find baby  
23 chicks somewhere, I've got to find somebody who will  
24 bring them to my farm or I've got to go pick them up  
25 myself; correct?

04:22PM

1 A Uh-huh.

2 Q I've got to find a reliable source of feed and  
3 feed ingredients who can get those items to me or  
4 where I can go pick them up; correct?

5 A Yeah. 04:22PM

6 Q Are those all things that are taken out of the  
7 equation so to speak under the vertically integrated  
8 model?

9 A Some of those are taken out and some are  
10 added. 04:22PM

11 Q Well, with regard to then -- let's go through  
12 it. With regard to the supply of baby chicks, is  
13 that something that the grower is responsible for in  
14 the vertically integrated system?

15 A Clearly obviously not. 04:23PM

16 Q The transportation for the baby chicks?

17 A No.

18 Q The feed, the cost of the feed or the feed  
19 supply?

20 A No. 04:23PM

21 Q The feed ingredients that are -- the supply of  
22 those ingredients that make up the feed?

23 A No, but there are some risks there depending  
24 on the quality of the feed delivered to the grower  
25 by the integrator. 04:23PM

1 Q Which would be there no matter who their  
2 supplier was; correct?

3 A Not necessarily.

4 Q The quality of feed could --

5 A It could vary, yeah.

04:23PM

6 Q It could vary regardless of who the supplier  
7 is; correct?

8 A Right.

9 Q Transportation of feed; correct?

10 A Correct.

04:23PM

11 Q Veterinary services?

12 A Yes.

13 Q Medicines?

14 A Yes.

15 Q Vaccinations?

04:23PM

16 A Yeah.

17 Q Market fluctuations for the price of birds --

18 A Growers --

19 Q -- on the market?

20 A Growers are indirectly affected by that under  
21 the vertically integrated system.

04:24PM

22 Q If I have a contract with George's for a base  
23 pay, I get that base pay regardless of what happens  
24 on the market to the price of birds, correct, on the  
25 open market?

04:24PM

1 A Correct, but there can be adjustment if the  
2 market is soft. George's may extend the days  
3 between flocks, which decreases the grower's  
4 revenue.

5 Q Do you have any evidence that George's has 04:24PM  
6 ever done that?

7 A I still don't have Agri Stats and Agri  
8 Stats --

9 Q So the answer is no?

10 A The answer is no because I don't have Agri 04:24PM  
11 Stats.

12 Q Okay. Is a grower protected from having to  
13 find a distribution system for birds off of their  
14 farm?

15 A Yes. 04:24PM

16 Q Or having to find a buyer for their birds?

17 A Yes.

18 Q You've used the term economic accounting  
19 several times today, so I just wanted to make sure I  
20 understood what that was. Is that different than 04:25PM  
21 financial accounting or cost accounting?

22 A I just used it to make a distinction between  
23 the cash flow accounting that you see in a lot of  
24 proforma statements for poultry operations or that  
25 I've seen in -- I think every one I've seen had a 04:25PM



1 cash flow. I distinguish true economic accounting.  
2 In some disciplines it might be called financial  
3 accounting.

4 Q Well, in Paragraph 16 of your affidavit you  
5 mention that after deducting a modest charge for 04:25PM  
6 family labor, that there's a negative budget for  
7 those farms. Just to understand what you mean by a  
8 modest -- deducting a modest charge for family  
9 labor, does this mean that it's after the grower  
10 paid himself something for working on the farm? 04:26PM

11 A That's what it means. The grower gets a  
12 modest fee. I don't know the exact number, but it's  
13 going to be 6, 7 or \$8 an hour for the time that  
14 they spend with the poultry operation.

15 Q So from a financial accounting standpoint, the 04:26PM  
16 grower is putting money in their pocket; correct? I  
17 understand you don't think it's enough, but I'm just  
18 saying they're putting money in their pocket;  
19 correct?

20 A The economic accounting looks at the whole 04:26PM  
21 flow of cost and returns and when they earn that.

22 Q Which is different from financial accounting?

23 A Maybe this is semantics.

24 Q Well, I guess there are -- I'm aware of  
25 financial accounting and there's a financial 04:27PM

1 accounting standards board that issues bulletins and  
2 guidelines on how you are to account for cash that  
3 comes in and profits that come in. I guess I've  
4 never heard of economic accounting until today. So  
5 I'm trying to understand, first of all, what the 04:27PM  
6 standards are and second of all, we're trying to  
7 make it clear, despite what you state in your  
8 affidavit, that they're putting something in their  
9 pocket; you just don't think it's enough?

10 A They're not getting a -- I've said many times 04:27PM  
11 the actual records that are publicly available with  
12 the accounting done from a management perspective,  
13 we call that finance or call it economics, but a  
14 management perspective, not cash flow, not tax  
15 accounting, when you do that, just as the Oklahoma 04:27PM  
16 State budget showed, there is a negative return to  
17 land and to risk and to management.

18 Q Does Paragraph 16 mean that the grower is  
19 putting some money in their pocket and paying  
20 themselves for running a farm when you make the 04:28PM  
21 statement that after deducting a modest amount for  
22 family labor; is that what that means?

23 A We would have to look at the numbers.

24 Q You wrote the statement. Just tell me what it  
25 means. 04:28PM

1 A The reason I'm hesitating is there can be a  
2 situation where the negative would be so large, an  
3 absolute value, that they wouldn't be putting any  
4 money in their pocket. They would actually be  
5 working for free or even at a cost.

04:28PM

6 Q But in Paragraph 16 you said after deducting a  
7 modest charge for family labor. What does that  
8 mean?

9 A It means just what I said, like the Oklahoma  
10 State budgets take out the --

04:28PM

11 Q You've already mentioned the Oklahoma State's  
12 budget earlier in the paragraph.

13 MR. RIGGS: Let him finish.

14 MR. GRAVES: Well, I just want him to  
15 answer my question. He made the statement and he  
16 won't tell me what he meant by that.

04:29PM

17 MS. XIDIS: Let him talk.

18 MR. RIGGS: Well, try again.

19 Q I'll keep asking the question a hundred times  
20 until you answer it.

04:29PM

21 A It's laid out in the Oklahoma State study.  
22 That is a common approach used for cost and return  
23 budgeting throughout agricultural economics and the  
24 basic system used by ag economists at every land  
25 grant university and in USDA who looks at projected

04:29PM

1 costs and returns. They go through. They put  
2 revenue --

3 Q I'm going to cut you off again because I  
4 didn't ask you about the Oklahoma State budget. I  
5 asked you about your statement in your affidavit and 04:29PM  
6 I want to know what you meant when you wrote that in  
7 your affidavit. Please answer the question.

8 MR. RIGGS: Object to the form since it --

9 MR. GRAVES: I mean I'll certify the  
10 question and we'll come back to answer this one 04:30PM  
11 question because he won't answer it. You know he's  
12 not answering it.

13 MR. RIGGS: Well, just for --

14 A I have answered. In my opinion I've answered  
15 it several times. 04:30PM

16 MR. RIGGS: If we could talk about it, I  
17 don't want to make a speaking objection, but I think  
18 I can explain where the miscommunication is.

19 MR. GRAVES: Well, there's not a  
20 miscommunication as far as I'm concerned. He's 04:30PM  
21 talking about a separate document that I'm not  
22 asking him about. I'm asking him about his  
23 statement in his affidavit, and I just want him to  
24 answer the question.

25 Q What did you mean when you wrote after 04:30PM

1 deducting a modest charge for family labor?

2 MR. RIGGS: Asked and answered.

3 A Which specific paragraph?

4 Q 16.

5 A Okay. After an overhead, after subtracting a 04:30PM

6 modest charge for family labor, that is shown

7 directly on the OSU budget. They have one line that

8 gives, excuse me, a return as I recall, to

9 everything the grower brings, which is labor,

10 management, equity, risk. Then a return for labor 04:31PM

11 is subtracted out, specifically referring to this.

12 The next to last line returns to overhead, risk and

13 management. Up above they've taken out labor and in

14 this case it's 4.50 an hour, even lower than I

15 thought. 04:31PM

16 Q Can you show me where that quote that you've

17 underlined on the affidavit is within that budget,

18 that exact quote?

19 A No, it's not here.

20 Q I know it's not because you wrote it. So just 04:31PM

21 tell me what you meant when you wrote it.

22 MR. RIGGS: Object to the question, asked

23 and answered.

24 MR. GRAVES: He hasn't answered it, David.

25 MR. RIGGS: I understand we have a 04:31PM

1 disagreement, but I don't know how to resolve it.

2 MR. GRAVES: All right. We'll certify the  
3 question and I guess we'll move to compel an answer  
4 and we'll have to come back to ask one question.

5 Certify the question.

04:32PM

6 MR. RIGGS: Doctor, do you think there's  
7 another way you can make it clear? You have the OSU  
8 article in front of you but -- it could save us some  
9 time if there's some way you could answer it  
10 differently, and I don't know that there is, but --

04:32PM

11 A I'll try once again.

12 Q If it's going to be the same answer, I don't  
13 want to hear it.

14 A You won't even look at it, so okay.

15 Q Well, because I'm not asking you about that  
16 document.

04:32PM

17 MR. RIGGS: If we could have this one  
18 marked. It's the one he refers to as --

19 MR. ELROD: Could we get some copies of  
20 that before we leave, David?

04:32PM

21 MR. RIGGS: Yeah, we'll get copies.

22 Q Doctor, throughout Paragraphs 21 and 23 you  
23 make reference -- of your affidavit you make  
24 reference to environmental risks, health risks and  
25 pollution.

04:33PM

1 A Uh-huh.

2 Q What scientific expertise do you have in  
3 evaluating environmental risks?

4 A None on the environmental side.

5 Q What about health risks? 04:33PM

6 A No.

7 Q What about pollution?

8 A As an economist, yes, but in terms of a  
9 science of it, no expertise.

10 Q In Paragraph 24 you discuss the assimilative 04:33PM  
11 capacity of land in the IRW for nutrients?

12 A Yes.

13 Q What scientific expertise do you have in that  
14 area?

15 A I'm not a scientist, but I have, as I've 04:33PM  
16 mentioned, studied the movement of plant nutrients  
17 extensively, especially early on in my career.

18 Q Have you studied it in the IRW?

19 A No.

20 Q In Paragraph 24 of your affidavit you mention 04:33PM  
21 that the discussion of nitrogen and phosphorus came  
22 to -- I think your language was something along  
23 these lines, came to the forefront of economic and  
24 scientific dialogue in the 1970's, and in response  
25 to some questions about that, I believe you made 04:34PM

1 reference to your participation in a Rockefeller  
2 grant study and another study that you were not a  
3 part of, one of which studied phosphorus and one of  
4 which studied nitrogen; is that a fair summary of  
5 what you stated?

04:34PM

6 A Most of it. The phosphorus issue with regard  
7 to poultry litter and waste came to the forefront in  
8 the late '80's or early '90's and not in the '70's.

9 Q Okay, and when you state the forefront of  
10 economic and scientific dialogue, I'm stating this

04:35PM

11 with all due respect, the fact that there were a  
12 couple of studies going on in the '70's about  
13 nitrogen, I'm not -- that to me doesn't necessarily  
14 mean that it was at the forefront or was a hot

15 button topic. So I want to know what you meant when  
16 you stated the forefront of economic and scientific  
17 dialogue.

04:35PM

18 A Dealing with confined animal production.

19 Q So specifically --

20 A Certainly a lot of articles have been written  
21 in resource and agricultural economics dealing with  
22 these issues.

04:35PM

23 Q But were they written in the 1970's? That's  
24 my question, is what was being published in the  
25 1970's about this topic that makes you conclude that

04:35PM



1 it was forefront of economic and scientific dialogue  
2 in the 1970's?

3 A It was just a topic of -- a major topic of  
4 discussion and research, scientific research,  
5 economic research, continuing on and off to the 04:36PM  
6 present.

7 Q What other studies besides the two Rockefeller  
8 studies in 1972 are you aware of with regard to  
9 nitrogen and confined animal operations in the  
10 1970's? 04:36PM

11 A There have been numerous projects at land  
12 grant universities.

13 Q In the '70's, though, is what we're talking  
14 about right now.

15 A '70's, '80's, '90's, 2000's. 04:36PM

16 Q Are any of those materials materials that you  
17 reviewed in preparation of the affidavit or that you  
18 produced?

19 A There may be some here but I've produced  
20 everything I have. 04:36PM

21 Q Okay. So to the extent that if there's not  
22 anything from the 1970's in there, then you're just  
23 -- when you make that statement, is that your memory  
24 of things?

25 A That is my professional memory. 04:36PM

1 Q Okay. Which is the same as your regular  
2 memory?

3 A Okay, yeah.

4 Q Okay. With respect to litter transport, were  
5 you aware that George's had in fact been 04:37PM  
6 transporting litter out of the IRW for several  
7 years?

8 A I had heard that some was being transported  
9 out but I have not seen what you might say hard  
10 numbers on how much each integrator was transporting 04:37PM  
11 out.

12 Q So you haven't seen any cost numbers  
13 associated with what the actual cost in the IRW is  
14 for transporting litter that George's has  
15 experienced at least? 04:37PM

16 A Not George's, no, I have not.

17 Q Okay. Have you seen any other actual numbers?  
18 I know you referenced the Tabler or Tabbler and  
19 Berry information. I don't know what that was based  
20 on, but I'm talking about numbers of people who are 04:37PM  
21 actually out there hauling litter.

22 A The only possibility I can think of is there's  
23 some numbers in one of the documents about the  
24 Oklahoma litter market that show cost of hauling,  
25 and I don't know if those are budgeted or actual, 04:38PM

1 but there are some numbers that I've seen from  
2 Oklahoma.

3 Q Did you analyze any cost of living information  
4 local to the IRW as part of reaching any of your  
5 conclusions?

04:38PM

6 A Cost of living would not be relevant, except  
7 through the wage rate that would be paid, and I  
8 mentioned some older information I have on county  
9 specific wage rates in Oklahoma.

10 Q Okay. Do you know whether the number of  
11 poultry farms in the IRW has gone up or down over  
12 the last, say, 30 years going back to the 1970's?

04:39PM

13 A USDA has put together county maps for the  
14 whole United States showing nitrogen, phosphorus and  
15 I think potassium down to the county level relative  
16 to excess capacity -- I mean relative to available  
17 land and assimilative capacity and so forth, and I  
18 think one of those goes back to '49, and the trend  
19 over time has been upward, which suggests that the  
20 trend in poultry production in the watershed has  
21 been going up.

04:39PM

04:39PM

22 Q Well, you're tying nutrients to poultry  
23 production, which I don't believe you have laid any  
24 kind of foundation for expertise in that area, but  
25 leaving that aside, I'm just asking you what you

04:40PM

1 know about poultry production, leaving aside your  
2 opinions about nutrient levels.

3 A As far as I know, it has increased.

4 Q Okay. So would that indicate that the demand  
5 for poultry farms was going up in the IRW during 04:40PM  
6 that time frame?

7 A It would indicate that the integrators decided  
8 to locate more poultry farms there.

9 Q Does that mean they needed more poultry farms  
10 there or at least they thought they did? 04:40PM

11 A You used the word demand.

12 Q Would there be a business reason to add  
13 additional farm capacity under contract if --

14 A To me that's their own transportation cost.  
15 They want them as concentrated as can be. 04:40PM

16 Q I'm not talking about proximity, Doctor. I'm  
17 talking about numbers right now. I know you want to  
18 answer questions that you want me to ask. I just  
19 want you to answer questions I'm actually asking.

20 MR. RIGGS: Object to the form. 04:41PM

21 Q I asked you --

22 A Let me answer it this way.

23 Q Okay.

24 A Perfect capita consumption of poultry products  
25 has trended upwards, a really strong trend in the 04:41PM

1 '70's and '80's, and the trend kind of leveling off  
2 per capita, U.S. population increasing, therefore,  
3 in a sense an increased aggregate demand for poultry  
4 and poultry products.

5 Q So using the 1970's as our time frame, just 04:41PM  
6 going off your affidavit about when some of these  
7 issues were being discussed, using the 1970's, over  
8 the last 30 years, are you saying that the demand  
9 for poultry products has gone up over the last 30  
10 years or at least it did for some period of time 04:41PM  
11 until it flattened off?

12 A Nationally per capita has kind of flattened  
13 off but population is still growing, so national  
14 demand continues to generally increase.

15 Q And would that mean that the integrators need 04:42PM  
16 capacity to grow those chickens?

17 A Yes.

18 Q Is that not a favorable free market situation  
19 as far as growers are concerned when there are  
20 integrators that all need additional capacity? 04:42PM

21 A May be.

22 Q Do you have any information that indicates  
23 that the integrators, for example, the defendants in  
24 this lawsuit, are anything other than competitors?

25 A At what level; what market level? 04:42PM

1 Q At selling chickens on the market?

2 A No.

3 Q So they're also -- if they're in a competitive  
4 situation, aren't they also then -- if they're in a  
5 competitive situation, and they're all needing  
6 growers, aren't they, in a competitive situation for  
7 growers as well?

04:43PM

8 A Not necessarily.

9 Q Explain.

10 A As I've explained, the integrator decides  
11 where the growers will be located, whether to start  
12 a new complex or to expand one. It's fully  
13 controlled by the integrator.

04:43PM

14 Q That wasn't my question. My question was, in  
15 a free market situation, which you've testified you  
16 want to see, if the demand for chicken meat is going  
17 up amongst a group of competitors and they all need  
18 capacity, isn't that a favorable situation for the  
19 growers?

04:43PM

20 A I have testified that the phrase free market  
21 has many different meanings. Just because firms are  
22 competitors at an output level, wholesale level,  
23 whatever you want to call it, does not necessarily  
24 translate into them being competitors for grower  
25 services.

04:43PM

04:44PM

1 Q But I think you already said they were; they  
2 needed more capacity?

3 A We're talking in the aggregate.

4 Q Okay. I understand you don't want to answer  
5 the questions. 04:44PM

6 MR. RIGGS: Object to the form. I don't  
7 think it is a question.

8 Q Do you know of anything that prevents growers  
9 from grouping together for any purpose that they  
10 might want to? 04:44PM

11 A To form associations?

12 Q However you want to define it.

13 A Over the years there's been a lot of fear in  
14 the grower community and some efforts to organize  
15 growers that have not worked out. 04:45PM

16 Q In the Illinois River watershed?

17 A I'm not aware of any efforts to organize in  
18 the Illinois River watershed.

19 Q Have you talked to any growers in the Illinois  
20 River watershed that expressed that they were afraid  
21 to group together or associate for some purpose? 04:45PM

22 A As I stated, I've not talked to any growers in  
23 the watershed.

24 Q Do you know whether there is in fact currently  
25 any type of association of poultry growers in the 04:45PM

1 Illinois River watershed?

2 A I'm not aware of any specific ones.

3 Q Do you know whether growers in the Illinois

4 River watershed can change companies if they

5 perceive that one company is paying more

04:45PM

6 competitively than another?

7 A I have mentioned that there's no publicly

8 available data on growers switching integrators

9 and --

10 Q That wasn't exactly my question, though. My

04:46PM

11 question was, is there anything that prevents them

12 from doing that that you're aware of in the IRW?

13 A There often nationally is a hurdle, a

14 switching barrier that comes about because the

15 integrator they switched to often requires expensive

04:46PM

16 upgrades of a house or equipment before they're

17 allowed to switch.

18 Q Do you have any information that any of the

19 growers in the IRW are so limited?

20 A I do not.

04:46PM

21 MR. GRAVES: That's all I have.

22 DIRECT EXAMINATION

23 BY MR. HIXON:

24 Q Dr. Taylor, my name is Philip Hixon. I

25 represent Peterson Farms in this matter. I'm going

04:47PM



1 to be skipping around. Most of what I was going to  
2 ask I think has been asked. So it should make this  
3 a little more pleasant. First of all, Mr. Graves  
4 mentioned a number of documents from George's and  
5 asked you if you had reviewed those in preparing  
6 your opinions in the affidavit, and I believe that  
7 you'd said no, with the exception of a contract?

04:48PM

8 A Yes.

9 Q Is the same true for Peterson Farms; have you  
10 reviewed anything except contracts?

04:48PM

11 A And I think one of the depositions I read was  
12 from Peterson Farms employee.

13 Q Was that Kirk Houchins?

14 A Yes.

15 Q Okay. Is Mr. Houchins' deposition something  
16 you relied on in formulating your opinions for the  
17 affidavit?

04:48PM

18 A I can't recall relying on any specific thing  
19 in it.

20 Q Let's go back to Paragraph 25 of your  
21 affidavit. I'm having some difficulty understanding  
22 exactly what your opinion is, and hopefully you can  
23 explain it in a way I can understand it. First of  
24 all, what's your understanding of what the purpose  
25 of the State's motion for preliminary injunction is?

04:49PM

04:49PM

1 A It's my understanding that it is to stop the  
2 application of litter to land within the watershed,  
3 and it is for the bacteria and health reasons.

4 Q Okay. If you go to the calculations that you  
5 made on Exhibit 3 that Mr. Elrod went through with 04:49PM  
6 you, do those calculations take into consideration  
7 these alleged health risks?

8 A No. This is simply a very simple preliminary  
9 calculation on what it costs to get it out of the  
10 watershed. 04:50PM

11 Q Okay, and that's my next question. If you  
12 take it out of the watershed and you transport it  
13 this 100 miles, what happens to it?

14 A I have not analyzed that.

15 Q Okay. So we're transporting what's been 04:50PM  
16 alleged to be a dangerous substance out of the  
17 watershed?

18 A Uh-huh.

19 Q And transporting it 100 miles but we don't  
20 know what happens to it? 04:50PM

21 A Correct.

22 Q I'm having difficulty understanding what the  
23 relevance of your affidavit is then to this motion  
24 for PI if you're not addressing those alleged health  
25 risks. 04:50PM

1 MR. RIGGS: Object to the form.

2 A It is simply one component of it, the cost of  
3 hauling it out, nothing more.

4 Q Okay, but it doesn't take into consideration  
5 those health risks? 04:51PM

6 A It does not. It's not a full-blown damage  
7 assessment by any means.

8 Q Okay. This proper economic accounting concept  
9 that you discussed earlier with regard to grower  
10 returns, would that concept, this proper economic 04:51PM  
11 accounting, apply to the opinion that you're making  
12 in Paragraph 25 of your affidavit?

13 A This Paragraph 25, again, it just looks at the  
14 cost of transporting. I was not asked to do a  
15 complete benefit evaluation. That is a much bigger 04:51PM  
16 activity that I may or may not be asked to do after  
17 this -- after this hearing.

18 Q Okay. I appreciate that answer, but the  
19 question I asked was a yes or no question.

20 A Okay. 04:52PM

21 Q Does the concept of proper economic accounting  
22 apply to the opinion that you've given in Paragraph  
23 25?

24 A When I was referring to proper economic  
25 accounting in the context of growers, that dealt 04:52PM

1 with a long time horizon and a lot of factors. When  
2 you go over to health issues, pollution issues,  
3 slightly different concepts are involved, but proper  
4 economic accounting should apply there. My  
5 accounting here is incomplete because I only looked  
6 at one aspect of it.

04:52PM

7 Q Okay. So in short, proper economic accounting  
8 does apply but that's not --

9 A I only looked at one slice of it.

10 Q Okay. If you were to conduct a proper  
11 economic accounting of the opinion you did in  
12 Paragraph 25, what additional factors would that  
13 include?

04:52PM

14 A Well, one would be the external cost, economic  
15 jargon, but the external cost of too much litter and  
16 waste being applied in the Illinois River watershed.  
17 It would involve looking at alternative uses outside  
18 the watershed for litter, such as burning. It would  
19 involve looking at lower phosphorus diets as a way  
20 of reducing phosphorus. Now, that is the more  
21 general problem and not the health issue. It would  
22 involve -- well, looking at a range of alternative  
23 ways of dealing with the problem. It would involve  
24 looking at where this excess litter and waste might  
25 be applied and be applied safely.

04:53PM

04:53PM

04:54PM

1 Q Okay. Let's -- those list the factors that  
2 you've just talked about. Most, if not all, of  
3 those are covered in documents that you've produced  
4 in these two boxes. You looked at those factors?

5 A I considered some of those factors, but I did 04:54PM  
6 not personally do -- attempt any kind of complete  
7 economic analysis.

8 Q Okay.

9 A I was not asked to.

10 Q What were you asked to do, and I know you've 04:54PM  
11 talked about --

12 A Uh-huh.

13 Q -- describing the industry.

14 A Basically to describe the industry and then  
15 just take a preliminary look at the cost of hauling 04:55PM  
16 it out as I've done.

17 Q Okay, and the cost that you have there, the  
18 cost of hauling it out, is that the true cost of  
19 hauling it out?

20 A I have mentioned that this is not a complete 04:55PM  
21 economic analysis. Okay? So in a sense it is not  
22 necessarily the total cost of hauling it out and  
23 making use, safe use of it in other areas. This  
24 just looks at the cost of hauling and not at cost  
25 and/or benefits of using it in another area. 04:55PM

1 Q Okay. Would part -- if you had -- looking at  
2 a complete picture and that opinion was a complete  
3 proper economic accounting, would part of that  
4 analysis be looking at the impact that the State's  
5 proposed injunction would have on poultry grower  
6 operations?

04:56PM

7 A And on integrators and on consumers.

8 Q Okay. So it would include all of those?

9 A It would be the full economic accounting at  
10 the aggregate level, yes.

04:56PM

11 Q Okay. One other issue that I'm having with  
12 this opinion in 25, if my understanding is -- the  
13 cost is just the cost of removing litter from one  
14 watershed?

15 A Right.

04:56PM

16 Q Does that include Oklahoma and Arkansas  
17 portions of the watershed or is that just Oklahoma?

18 A It's just again a simple type of calculation.  
19 That's what Tabler and Berry did. It's not a  
20 full-blown transportation economics model where you  
21 would look at where in the watershed it's generated,  
22 Oklahoma or Arkansas, or the part of the watershed  
23 and which would be the optimal place to transport  
24 that to.

04:57PM

25 Q Okay. Maybe my question wasn't clear. The

04:57PM

1 3,600 houses that you now understand is an  
2 overstated number --

3 A Right.

4 Q -- where are those 36 (sic) houses; are those  
5 houses only in Oklahoma or are they in Oklahoma and 04:57PM  
6 Arkansas?

7 A They're in Oklahoma and Arkansas, but a  
8 majority of them are in Arkansas.

9 Q Okay. That was my --

10 A I think somewhere here is a map showing dots 04:57PM  
11 for all of the 3,600 houses.

12 Q Okay. Another question on this calculation.

13 A Uh-huh.

14 Q We're taking this cost from this one million  
15 acre watershed in Oklahoma and Arkansas and we're 04:57PM  
16 spreading that cost across the entire nation, that's  
17 your opinion in Paragraph 25, to reach this one or  
18 two cents a person?

19 A That -- yes.

20 Q What -- explain to me the mechanism. How can 04:58PM  
21 the attorney general of Oklahoma make you in Alabama  
22 pay one or two cents a year more for chicken?  
23 Explain to me that mechanism.

24 MR. RIGGS: Object to the form.

25 A The attorney general would not be making this. 04:58PM

1 If this cost was borne by integrators, then economic  
2 theory indicates that that would be passed on to  
3 final consumers, but this cost wouldn't be passed on  
4 for every single production complex or watershed but  
5 only the Illinois River watershed. So this takes  
6 that cost and diffuses it out, and that is generally  
7 the way a market works.

04:58PM

8 Q But I'm asking how that happens because here's  
9 my conceptual problem. This lawsuit, you've got the  
10 poultry companies represented in this room.

04:59PM

11 A Uh-huh, yes.

12 Q Some of them sell nationally, some of them are  
13 regional companies, and then you've got -- there was  
14 one document in the documents you produced that  
15 listed companies who produce broilers in the United  
16 States.

04:59PM

17 A Yes.

18 Q And it's only a small portion of those  
19 companies that have been named in this lawsuit.

20 A Uh-huh.

04:59PM

21 Q So I'm asking how, how does the attorney  
22 general spread the cost of removing litter from the  
23 Illinois River watershed to those companies that  
24 have not been named in this lawsuit?

25 MR. RIGGS: Object to the form.

04:59PM



1 A Again, the attorney general is not doing it.  
2 The reasoning here is just through a market. If  
3 feed costs go up, that would be transferred through  
4 the market, part or all of it, to final consumers,  
5 and this is the same concept that if there is an 05:00PM  
6 increase in cost due to handling, changing the way  
7 litter and waste is handled here, then that would be  
8 transferred to consumers and it would be diffused  
9 throughout.

10 Q Okay, but I'm asking how it's diffused. 05:00PM

11 A Through supply and demand.

12 Q If there are other poultry companies out there  
13 not incurring this additional cost, how is it being  
14 diffused through the market; how is what is  
15 happening in Oklahoma and Arkansas affecting a 05:00PM  
16 poultry company in Georgia or Alabama?

17 A Through aggregate economic adjustments.

18 Q Okay. I'm still not following. Can you  
19 enlighten me any more than what you have?

20 A The basic argument is just through forces of 05:01PM  
21 supply and demand. If supply shifts upward, which  
22 it would with higher costs, then in the downstream  
23 market, that would through the supply and demand  
24 lead to a higher price on average that would be  
25 diffused over all consumers. 05:01PM

1 Q It's been years since I've taken any economics  
2 course, but if I'm in the market and I'm buying  
3 chicken, am I going to buy chicken from Purdue who  
4 is not subject to this cost or am I going to buy  
5 chicken from Tyson who is paying this cost? I'm 05:01PM  
6 probably going to buy from Purdue, and I'm trying to  
7 understand how the cost that Tyson is incurring is  
8 being shifted to Purdue.

9 A Through aggregate economic adjustments. If  
10 Tyson pays a higher cost than following standard 05:02PM  
11 economic logic, there would be somewhat of a  
12 reduction in the quantity they make available on the  
13 market and that reduction in aggregate quantity  
14 would lead to a higher price for consumers.

15 Q Okay. I'm starting to follow you there. 05:02PM  
16 Okay. So if you were to conduct this proper  
17 economic accounting, part of that would be the  
18 impact on these defendants' production?

19 A Yes.

20 Q And my understanding of what you just said is 05:02PM  
21 their production would decrease?

22 A Somewhat.

23 Q Somewhat?

24 A Which would decrease aggregate production and  
25 with slightly less broiler products or poultry 05:03PM

1 products being placed on the market, that would mean  
2 a slightly higher price for those products, and  
3 that's what I've tried to compute here, that it's  
4 very small in the aggregate, averaged over all  
5 consumers.

05:03PM

6 Q Okay, but that's assuming that these other  
7 companies that are out here that aren't subject to  
8 this lawsuit have the capacity to increase supply;  
9 is that correct?

10 A They would increase the quantity supplied  
11 somewhat because of a slightly higher price but then  
12 the net effect is less being placed on the market in  
13 the aggregate.

05:03PM

14 Q Okay. I think we need to change tapes.

15 VIDEOGRAPHER: We are now off the Record.

05:03PM

16 The time is 5:03 p.m.

17 (Following a short recess at 5:03 p.m.,  
18 proceedings continued on the Record at 5:11 p.m.)

19 VIDEOGRAPHER: We are back on the Record.

20 The time is 5:10 p.m.

05:11PM

21 Q Okay. We're back on the Record. A couple  
22 more questions related to this opinion in Paragraph  
23 25.

24 A Okay.

25 Q I think we left off the cost of removing

05:11PM

1 litter from the Illinois River watershed would cause  
2 production in the Illinois River watershed to drop;  
3 is that correct?

4 A It may.

5 Q It may? 05:11PM

6 A Short term, since nutrient levels are so high,  
7 it would be very small, if at all. Long term it  
8 might start going down.

9 Q Okay. If production drops in the watershed,  
10 who is ultimately going to pay for that? What I'm 05:11PM  
11 getting at --

12 A Production of what in the watershed?

13 Q Broilers.

14 A Production of broilers decreases in the  
15 watershed? 05:12PM

16 Q Uh-huh.

17 A What this shows is consumers would.

18 Q Consumers would pay another one or two cents?

19 A Right.

20 Q Okay. What happens to those 2,000 to 2,500 05:12PM  
21 poultry houses in the Illinois River watershed? I  
22 think you've testified earlier that growers are --  
23 could stand to make more off their investment in  
24 these fixed assets?

25 A Right. 05:12PM

1 Q What happens to their investment in these  
2 fixed assets if production in the Illinois River  
3 watershed among the defendants drops?

4 A That depends on whether the integrators change  
5 the base pay in the contracts. 05:12PM

6 Q Okay. Well, let's assume the integrator bumps  
7 up the base pay in the contract to compensate them  
8 for that.

9 A Uh-huh.

10 Q What does that do to the integrators vis-a-vis 05:13PM  
11 Purdue and these other people that are out there  
12 that aren't subject to the lawsuit?

13 A Through their economic adjustments, they would  
14 bear -- they would get the benefit of very slightly  
15 higher wholesale prices for poultry and, you know, 05:13PM  
16 would have some higher costs, too, and I haven't  
17 netted any of that out, and the net actually depends  
18 on how they change base pay and how much production  
19 changes and so forth.

20 Q Okay. Is your opinion in Paragraph 25, is 05:13PM  
21 that taking into account potential international  
22 sources of poultry? Say, I don't want to buy from  
23 Tyson or Peterson or somebody in Georgia; I want to  
24 buy my chickens from Brazil.

25 A That kind of analysis can be done, but the 05:13PM

1 numbers I'm talking about here are not going to  
2 shift supply from the United States to us importing  
3 all of the poultry products. There could be some  
4 very small marginal adjustments, but with the kind  
5 of cost we have here, that's not going to  
6 dramatically shift production.

05:14PM

7 Q So you don't think that's a factor, other  
8 cheaper sources of poultry in the market?

9 A It's a consideration but it's a small  
10 consideration.

05:14PM

11 Q Okay. Would it be part of this proper  
12 economic accounting if you had performed a full  
13 economic accounting of these issues?

14 A Certainly some consideration of imports and  
15 exports would be warranted.

05:14PM

16 Q Okay. These increases in prices that you are  
17 talking about, are these -- and I know you can't  
18 give me it will happen in a week, it will happen in  
19 a year, but what kind of time frame are we looking  
20 at for these increased costs?

05:14PM

21 A I haven't carefully analyzed that, but there  
22 are some dynamics, price dynamics, and most of those  
23 dynamics work themselves out like in a two or  
24 three-year period for poultry because of the rapid  
25 production cycle. You go cattle, the real long

05:15PM

1 biological cycle, it's a different matter.

2 Q Okay, and have you taken into account if one  
3 of these defendants has some long-term contract with  
4 a buyer, say, Peterson sells to Company X and that's  
5 a five-year contract. How does that play into the  
6 numbers that you've put here?

05:15PM

7 A It depends on the price obviously that's in  
8 the contract and whether that would be adjusted and  
9 also depends on the total production, the size of  
10 that contract, but if those contracts exist, you  
11 know, if I have details on the kind of sales  
12 contracts they have, that can be brought into  
13 economic analysis.

05:15PM

14 Q Okay. Back to this import --

15 A And the short-term versus long-term analysis.

05:16PM

16 Q Back to this import-export idea that was a  
17 minor factor. Peterson Farms, the chickens that it  
18 sells, some of those leave this country?

19 A Or parts of them do.

20 Q Or parts of them do, okay. Under the scenario  
21 here that you have in Paragraph 25, have you taken  
22 into consideration those issues; if that chicken is  
23 going wherever it's going and that other country can  
24 buy from somebody next door that's not incurring  
25 this cost, what impact does that have?

05:16PM

05:16PM

1 A All of that can be brought into an evaluation,  
2 but with the small numbers we're talking about here,  
3 the net effect would still come down to  
4 approximately what this shows. If you considered  
5 all of those details and imports and exports and all  
6 of that --

05:17PM

7 Q Go ahead.

8 A -- well, just the net effect would come out  
9 close to this.

10 Q Well, my understanding, the small numbers that  
11 you're talking about is an incomplete analysis, and  
12 we've talked about numerous other factors that would  
13 be relevant to a complete economic analysis.

05:17PM

14 A Yes.

15 Q Is it your testimony that if you were to  
16 perform that complete economic analysis, these  
17 numbers would remain the same?

05:17PM

18 A Since I haven't analyzed that, I would just be  
19 speculating, and I don't want to speculate on that.

20 I'm saying that for what I've looked at here,  
21 admittedly a partial analysis, that if we took this  
22 cost effect and then looked at a whole very large  
23 system of supply and demand equations, import-export  
24 equations and all of that and get a net effect, it's  
25 not going to be much different than the one I have

05:17PM

05:18PM



1 here with a simple calculation.

2 Q Okay. When you say it's not going to be much  
3 different, that's on a national scale?

4 A On a national scale, right.

5 Q Okay, and your opinion is it wouldn't change 05:18PM  
6 even if you take into consideration these other  
7 companies out there who are not incurring this cost?

8 A Would not change appreciably.

9 Q Okay. The calculation that you have in  
10 Paragraph 25, it assumes that the litter that's 05:18PM  
11 being removed from the Illinois River watershed is  
12 being baled to be removed; is that correct?

13 A It does not.

14 Q It does not assume that it's being baled?

15 A Right. 05:19PM

16 Q Maybe I misunderstood your testimony earlier.  
17 It was my understanding that you testified that you  
18 assume that it was being baled and that would allow  
19 back-haul.

20 A There are two assumptions made in these hand 05:19PM  
21 calculations. One is that only half of it is hauled  
22 out. The other one is that there's a back-haul that  
23 reduces the cost of hauling it by half, and the  
24 numbers I have in Paragraph 25 would apply under  
25 either one of those assumptions, which I admittedly 05:19PM

1 did not state clearly in Paragraph 25.

2 Q I believe your testimony earlier was you began  
3 billing work to the State in this past summer?

4 A I think it was sometime in August, early  
5 August.

05:20PM

6 Q Was that work in preparation for this PI?

7 A A lot of it was just the general information.  
8 I didn't have a very specific assignment then but  
9 just what the litigation involved in a free hand to  
10 start researching it and digging up any information  
11 I might need.

05:20PM

12 Q Do you recall when you were asked to formulate  
13 the opinions that are in your affidavit that were  
14 attached to the motion for PI?

15 A Not precisely. I keep a record of my hours in  
16 a very brief statement of what I was doing and that  
17 might indicate. I'd just have to go back and look,  
18 but it was just partway through the process, not  
19 early on.

05:20PM

20 Q Okay. Do you have -- I won't hold you to a  
21 date but generally between August and obviously  
22 November 19th?

05:21PM

23 A I don't recall exactly. My mother was  
24 hospitalized in Oklahoma City, and some of this I  
25 did sitting in a hospital room on a computer, and

05:21PM

1 seems like it was sometime in the real late  
2 September to early October period when they gave me  
3 the specific request for an injunctive relief.

4 Q So approximately September time frame?

5 A October, somewhere. 05:22PM

6 Q Somewhere in there?

7 A Uh-huh.

8 Q Do you know how -- approximately how many of  
9 the hundred hours that you billed was spent  
10 compiling this document? 05:22PM

11 A I could go back and tell, but I would guess  
12 something like 80 hours. A lot of my time was spent  
13 researching and getting all of that literature  
14 that's in the boxes and on the CD.

15 Q Okay. Apart from the calculations that are on 05:22PM  
16 Exhibit 3, did you perform any original analysis?  
17 It just appears going through the affidavit, that  
18 many of the opinions in here were opinions that were  
19 in the documents that you produced to us.

20 A I went through and as I mentioned, I scanned a 05:22PM  
21 lot of contracts to make sure that the tournament  
22 system of pay in the Illinois River watershed  
23 generally was the same as at a national level.

24 Q I believe earlier you testified regarding the  
25 average size operation in the Illinois River 05:23PM

1 watershed is three or four houses, and you got that  
2 information from plaintiff's counsel. Do you recall  
3 that?

4 A Yes.

5 Q Is there any other information that you got -- 05:23PM  
6 received from plaintiff's counsel that you relied on  
7 in formulating the opinions in your affidavit?

8 A I've given you everything that I have pulled  
9 together.

10 Q Okay. On this balance of power idea that 05:23PM  
11 you've discussed several times today, would that  
12 include allowing a grower to negotiate whether he or  
13 she wanted the litter produced on his farm?

14 A If he or she wanted the litter produced on the  
15 farm, that's just going to happen. Maybe I didn't 05:24PM  
16 understand your question.

17 Q Well, okay. The existing contracts, the  
18 litter belongs to the growers.

19 A Okay, but if the grower raises birds, then the  
20 litter is produced on the farm. 05:24PM

21 Q Right.

22 A Like I say, maybe I misunderstood your  
23 question.

24 Q It was a bad question. We'll move on. It's  
25 getting late. Let's go back to Paragraph 25. We 05:25PM

1 haven't beaten that horse to death. Did the numbers  
2 in Paragraph 25, did they take into account creating  
3 a market for this one-half of the IRW litter that  
4 you're removing 100 miles?

5 A Nothing for creating a market. 05:26PM

6 Q Okay. Would there be additional costs  
7 associated with creating a market for litter outside  
8 the Illinois River watershed?

9 A Well, there could be additional costs. There  
10 could also be additional rewards depending on how 05:26PM  
11 successful they are in creating the market.

12 Q Okay. That's something that you haven't taken  
13 into account in Paragraph 25?

14 A Correct.

15 Q Okay. Do the numbers in Paragraph 25 take 05:26PM  
16 into consideration transportation and when I ask  
17 that question, that's probably not a complete  
18 question. When I'm saying transportation, adequate  
19 transportation to remove that amount of litter from  
20 the Illinois River watershed? 05:27PM

21 A Yes.

22 Q Okay. So --

23 A That's my understanding of the Tabler and  
24 Berry numbers.

25 Q Okay. That they assume that there's adequate 05:27PM

1 transportation?

2 A Infrastructure or it would develop.

3 Q Okay. Or it would develop?

4 A Uh-huh.

5 Q And over what period would it develop, if not 05:27PM  
6 existing?

7 A I haven't analyzed it, but I would expect it  
8 to develop quickly if they had to haul it all out.

9 Q Okay. So is that number or is it not in  
10 Paragraph 25? 05:27PM

11 A In the economic jargon, this is an average  
12 cost, and it's the same for hauling one load as it  
13 would be for however many loads necessary to get it  
14 all out of the watershed.

15 Q Okay. So it's assuming the capacity is there 05:28PM  
16 whether the capacity is --

17 A Or it will be there.

18 Q Or it will be there, okay.

19 A At this price.

20 Q Okay. The numbers do take into consideration 05:28PM  
21 this back-haul issue that we discussed earlier?

22 A Or hauling only half of it out.

23 Q Or only hauling half of it?

24 A Right.

25 Q As part of this back-haul portion, do the 05:28PM

1 numbers take into consideration cleaning of the  
2 trailers, the trucks?

3 A From what I have read about the baling and the  
4 back-haul, because it's baled, then the cleaning of  
5 the truck would be unnecessary or pretty easy.

05:28PM

6 Q Okay.

7 A Otherwise, they couldn't do the back-haul.

8 Q Okay. I don't know whether we've talked about  
9 the baling process except in passing. Can you  
10 describe what this baling process is?

05:29PM

11 A I have not seen it.

12 Q You haven't seen it?

13 A No.

14 Q Okay. Do you know whether litter is composted  
15 before it's back hauled, whether it's just taken  
16 from the house and taken to a baling facility?

05:29PM

17 A From the watershed, I would expect to find  
18 some composting and -- but most of the bulk haul is  
19 probably just basic litter waste matter.

20 Uncomposted, I'll put it that way.

05:29PM

21 Q Okay. Do you know whether the alleged health  
22 effects that the State contends in their PI, is it  
23 the same for composted litter as it is for  
24 uncomposted litter?

25 A I'm not a scientist or medical doctor, so I

05:29PM

1 don't know.

2 Q Okay. Is that something that's taken into  
3 account in Paragraph 25?

4 A No, but it's something that could be taken  
5 into account in the complete economic analysis that 05:30PM  
6 we talked about.

7 Q Okay. How did -- where did the 100-mile  
8 hauling limit come from?

9 A It came from Tabler and Berry. I have no idea  
10 how they came up with that. Because of that in the 05:30PM  
11 footnote down here, I said that that number could be  
12 scaled up or down depending on how far it needed to  
13 be hauled.

14 Q Okay. You may have answered this with that  
15 answer, but you're not assuming that -- well, okay. 05:30PM  
16 For example, Tulsa is a hundred miles from some  
17 portion of the Illinois River watershed.

18 A Okay.

19 Q Litter from that farm coming to Tulsa, did you  
20 take that into consideration within this hundred 05:31PM  
21 mile radius of the watershed where from the point of  
22 production, where it could be used?

23 A No, and as I mentioned earlier, I did not  
24 consider any big trans shipment model on where it  
25 would go and where you would get it and all of that. 05:31PM



1 Q Okay. Would -- okay. Could those factors  
2 affect the costs that you've assigned for  
3 transportation?

4 A Yes.

5 Q Okay. 05:31PM

6 A In terms of average miles hauled.

7 Q Okay, and that could be both up and down or  
8 down?

9 A Right.

10 Q Assuming the litter is hauled out in bales and 05:31PM  
11 there's a back-haul, what is your assumption that  
12 the back-haul would be?

13 A I didn't make an assumption. I just picked  
14 this up from the University of Arkansas study where  
15 they considered that. 05:32PM

16 Q Okay. If litter was baled, what kind of  
17 trailer would it be transported on; would it be a  
18 flatbed or is it stuck in a --

19 A I don't know. Presumably they considered  
20 that. 05:32PM

21 Q Okay. That would be in the underlying study  
22 then?

23 A Right.

24 MR. HIXON: I think that's all I have.

25 DIRECT EXAMINATION

1 BY MR. SANDERS:

2 Q Dr. Taylor, my name is Bob Sanders and I  
3 represent the Cal-Maine defendants, and there's not  
4 much left for me to ask but I want to ask you  
5 something.

05:33PM

6 A Okay.

7 Q I understand you to say that you did not  
8 intend to make any different calculations before the  
9 preliminary injunction hearing?

10 A I do not intend to and haven't been asked to.

05:33PM

11 Q Okay. So --

12 A I think it would be appropriate to correct for  
13 the number of houses, but I haven't been  
14 specifically asked to provide a document making that  
15 correction.

05:33PM

16 Q All right, and if you're not going to make any  
17 different calculations between now and the time of  
18 the preliminary injunction hearing, I suppose you're  
19 not going to have any additional or different  
20 opinions than the ones that you've expressed here  
21 today; is that correct?

05:33PM

22 A Correct, as far as I know.

23 Q All right. Paragraph 25 of your affidavit,  
24 you said that the purpose was to show that the costs  
25 for hauling litter out of the IRW would not be a

05:33PM

1 huge deal at the national level. Do you remember  
2 saying that?

3 A In connection with the second sentence of that  
4 paragraph, yes, on the cost to consumers, if the  
5 cost was transferred to consumers.

05:34PM

6 Q Why did you delve into the cost to consumers?

7 A Maybe it's -- bread and butter over the years  
8 has been an aggregate econometric simulation model  
9 of most of the agricultural sector, and with that, I  
10 compute price effects and quantity effects and farm  
11 income effects and consumer effects, so it's kind of  
12 my MO to --

05:34PM

13 Q Well, did the plaintiff lawyers ask you to run  
14 some calculation to see what the effects on  
15 consumers would be?

05:34PM

16 A Not specifically.

17 Q Okay, and why did you look at effects on  
18 consumers at a national level?

19 A Get into some economic jargon. We have --  
20 think of regional prices for processed whole chicken  
21 or chicken products, and all of those prices tend to  
22 move together. In economic jargon they talked about  
23 the phrases co-integrated and because of that, if  
24 you have an effect in one area like this, then with  
25 all of the aggregate adjustments, that tends to be

05:35PM

05:35PM

1 spread out because those prices are co-integrated.

2 Q Well, is it spread out perfectly; is the price  
3 of chicken the same in Vermont as it is in Idaho?

4 A The -- well, I don't have specific  
5 information, but I would guess that, no, it is not 05:36PM  
6 the same, but they move together like this. One can  
7 be above another, and that means that they're  
8 co-integrative and move together. It doesn't mean  
9 they're at the same average level.

10 Q So the price for consumers in the Illinois 05:36PM  
11 River watershed could be higher than the price for  
12 consumers in Vermont or Idaho; is that correct?

13 A It could be, but this additional effect would  
14 be dissipated and so would these movements. The  
15 movement would be ever so slightly higher in all 05:36PM  
16 regions.

17 Q How do you know that the effects would be  
18 dissipated?

19 A Because of studies showing that regional  
20 markets for poultry products are co-integrated 05:36PM  
21 and --

22 Q Well, if the prices eventually are dissipated,  
23 wouldn't all prices nationally eventually be the  
24 same?

25 A I don't mean dissipated in the sense of 05:36PM

1 averaging back to zero. I mean dissipated in the  
2 sense of being spread out nationally.

3 Q I understand, and if that's the point, I  
4 mean -- that's what I thought you meant, but if  
5 geographic differences eventually dissipate, why do 05:37PM  
6 you not have uniform prices from one end of the  
7 country to another?

8 A Generally it's because of transportation and  
9 other cost differences, one region compared to  
10 another, and that's why the price can be a lot 05:37PM  
11 higher let's say in Oregon than it would be in  
12 Tulsa, but they tend -- when prices move according  
13 to all kinds of demand and supply shocks, and they  
14 tend to move together.

15 Q Okay, but they don't move together all the 05:37PM  
16 time, do they?

17 A Not lock step but --

18 Q And prices could be higher in the Illinois  
19 River watershed area because of the -- if the  
20 plaintiff is successful in its motion for 05:37PM  
21 preliminary injunction; isn't that correct?

22 A If all of the poultry products are sold in  
23 this area, then, yes, there might be an effect like  
24 that, but that's assuming that they're all sold  
25 right here. 05:38PM

1 Q And assuming -- well, to the extent that the  
2 local consumption of poultry products comes from  
3 local production, largely from local production,  
4 then there might very well be a difference in price  
5 in this local area; isn't that correct? 05:38PM

6 A Well, there could be, but a lot of these  
7 products are -- you know, the chicken is cut up and  
8 legs go to other parts of the world and breasts  
9 consumed here and --

10 Q It could be you just don't know; is that what 05:38PM  
11 you're saying?

12 A I don't have detailed data on that.

13 Q Okay. Were you asked by the plaintiff's  
14 lawyers to attempt to assess or quantify any  
15 potential injury to the economies of Oklahoma or 05:38PM  
16 Arkansas in the event the plaintiff is successful in  
17 its application for preliminary injunction?

18 A I have not specifically been asked to look at  
19 that.

20 Q So I presume you will offer no testimony about 05:39PM  
21 any potential injuries to the economies of Oklahoma  
22 or Arkansas in the event the plaintiff gets the  
23 preliminary injunction it has sought; is that  
24 correct?

25 A No quantitative analysis. 05:39PM

1 Q Well, any qualitative analysis, any other sort  
2 of analysis besides quantitative?

3 A At present I don't plan to.

4 Q Okay, and at present you have no opinion on  
5 that; is that correct?

05:39PM

6 A I have an opinion in the sense that in the  
7 past I have done studies looking at the economic  
8 impact of the poultry industry on the state of  
9 Alabama and on counties in Alabama ten or so years  
10 ago. So I won't say that I don't have an opinion  
11 about the direction or magnitude of the effect, but  
12 it's based on the Alabama analysis, and none that I  
13 have done or been asked to do here.

05:40PM

14 Q All right, and the numbers for the Alabama  
15 production and the effect that Alabama production  
16 has on the economy of Alabama doesn't have much to  
17 do with the production in the IRW and the effect in  
18 Oklahoma and Arkansas, does it? I understand the  
19 methodologies may be the same if you were to examine  
20 that.

05:40PM

05:40PM

21 A The methodology that is typically used to look  
22 at a regional impact is called an input-output  
23 model, and there are couple of them commercially  
24 available, one of them from the government. They're  
25 also called multiplier models. The multipliers for

05:41PM

1 the poultry industry are not appreciably different  
2 for Oklahoma, Alabama, Arkansas, Georgia.

3 Q Does that mean that the Alabama poultry market  
4 is as large a percentage of the gross product of  
5 Alabama as the Arkansas poultry industry is of the  
6 gross product of Arkansas?

05:41PM

7 A It means take a multiplier. Let's assume a  
8 multiplier of two in both areas. It doesn't mean  
9 that you are multiplying two by the same number in  
10 other states.

05:41PM

11 Q I gotcha.

12 A That means that it's two in both states.

13 Q All right. Did the plaintiff's lawyer ask you  
14 to assess or quantify any potential economic  
15 injuries to farmers in the Illinois River watershed  
16 if the plaintiff gets the preliminary injunction it  
17 seeks here?

05:42PM

18 A I have not been asked to do that at this time.

19 Q All right. Now, Mr. Hixon asked you about  
20 your statement that one of the short-term or

05:42PM

21 long-term effects of this additional cost or  
22 potential additional cost being imposed against the  
23 integrators would be that production in the Illinois  
24 River watershed would or that the integrators would  
25 produce less product in the Illinois River

05:42PM



1 watershed; is that correct?

2 A That's just a theoretical adjustment that we  
3 would expect.

4 Q All right, and Mr. Hixon also asked you about  
5 this, but isn't it correct that if the integrators 05:42PM  
6 produced less product, that the farmers are going to  
7 be the ones who suffer as a result of that lesser  
8 production?

9 A Depends on what kind of contract pay  
10 adjustments are made. 05:43PM

11 Q No pay adjustment.

12 A No pay adjustment?

13 Q The attorney general hasn't asked for a  
14 preliminary injunction to make the integrators  
15 adjust the pay. Presume no pay adjustment. 05:43PM

16 A Under that assumption, contract growers on  
17 average would be worse off.

18 MR. SANDERS: That's all I've got. Thank  
19 you, sir.

20 MR. RIGGS: I have a few then if that's 05:43PM  
21 everybody.

22 CROSS EXAMINATION

23 BY MR. RIGGS:

24 Q During Mr. Tucker's examination, I believe you  
25 referred to these boxes of documents. We have a 05:43PM

1 couple of boxes. One is on the table and the other  
2 is below, and you referred to those as documents  
3 that the State's lawyers had provided you. I  
4 believe that's correct. Where did all those  
5 documents in those boxes come from?

05:43PM

6 A Most of the documents in the boxes are ones  
7 that I came up with in my own research, and the  
8 electronic version on the CD, the studies of ag econ  
9 done by ag economists on this issue or related  
10 issues, I came up with. There are some documents in  
11 there that plaintiff attorneys gave me, the  
12 depositions and a lot of other -- there's a detailed  
13 map of -- showing poultry houses in the watershed  
14 and some of that, but in terms of weight, I came up  
15 with almost all of that on my own.

05:44PM

05:44PM

16 Q Were you restricted in any way by State's  
17 attorneys with respect to what kind of research you  
18 did or gathering of information after you were told  
19 what we wanted you to develop opinions about?

20 A I was not restricted in any way.

05:45PM

21 Q Did we resolve that issue about which of those  
22 Goodwin articles you relied on? There were two  
23 separate Goodwin articles, and I'm not sure where we  
24 left that.

25 A There are actually several Goodwin articles,

05:45PM

1 but the one that talks about the back hauling is the  
2 Too Litter Too Late and Claire --

3 MS. XIDIS: Do you want to refer to that by  
4 Bates number?

5 MR. RIGGS: We'll go ahead and mark it so 05:45PM  
6 we make sure we have a good Record on this.

7 A Bates 2480 through 2495.

8 Q Now, Dr. Taylor, I would begin briefly like to  
9 direct your attention to Exhibit No. 3, which are  
10 those handwritten calculations that you've made. 05:45PM

11 Again, referring to the top of the second page of  
12 Exhibit 3 where it refers to the 3,661 houses in the  
13 IRW which you have acknowledged --

14 A That I learned -- I'm sorry.

15 Q I believe you acknowledged was not a correct 05:46PM  
16 or valid number of houses and that you thought the  
17 actual number should have been 2,000 or 2,500 I  
18 believe is your testimony. Is that a correct  
19 statement about it?

20 A That's what I understand from you, that there 05:46PM  
21 are 2,000 to 2,500 that are active.

22 Q What would be involved in correcting your  
23 calculations if you were using that number as  
24 opposed to the 3,661 number?

25 A It would simply be to scale back the 05:46PM

1 production in the Illinois River watershed, and  
2 actually from my calculations, the number of houses  
3 doesn't really matter as long as I know total  
4 production, live weight production in the watershed.

5 I can work off of that number and then just make 05:47PM  
6 proportional adjustments of the costs to final  
7 consumers, the last sentence in Paragraph 25.

8 Q So what would the effect of that change be in  
9 general without making the actual calculation?

10 A Well, in the last sentence I say it would 05:47PM  
11 result in an additional cost of only one to two  
12 pennies per year per person for all poultry  
13 consumed, and it would be somewhat smaller than one  
14 to two pennies. It would just be proportionally  
15 scaled downward if the production, actual production 05:47PM  
16 is lower than the 1.5 billion pounds I approximated  
17 here.

18 Q So that number of houses was not used by you  
19 to calculate anything about the total amount of  
20 waste generated in the IRW annually? 05:48PM

21 MR. GRAVES: Object to the form of the  
22 question.

23 Q Or was it?

24 A I used that number to calculate total  
25 production in the Illinois River watershed relative 05:48PM

1 to U.S. total production just to get perspective on  
2 the size of it.

3 Q I believe you acknowledged in response to Mr.  
4 Elrod's questions about costs of transporting waste  
5 from the watershed or litter from the watershed, 05:48PM  
6 since those are 2003 numbers, that diesel fuel costs  
7 have gone up since then. Other than that cost, what  
8 other factors would you want to look at to make a  
9 current calculation regarding that cost?

10 A Well, to work off of the Tabler and Berry 05:48PM  
11 number in 2003, I would need the current price of  
12 diesel and the 2003 price and know the diesel fuel  
13 cost as a component of the total trucking cost and  
14 then make a proportional adjustment in that.

15 Q If litter cannot be land disposed or land 05:49PM  
16 applied in the IRW, does it as a result of that have  
17 no value?

18 A In terms of gross value, it can have value  
19 outside the watershed.

20 Q With regard to Paragraph 25 then where we were 05:49PM  
21 talking about a complete analysis applied to the  
22 matter covered by your opinions in Paragraph 25,  
23 would a complete economic analysis take into account  
24 the value of that litter once removed to the  
25 location, wherever it was taken within that 100-mile 05:50PM

1 radius?

2 A It could account for both the cost and the  
3 benefits of using that litter outside the watershed.

4 Q So presumably that value of the litter taken  
5 to -- if it were a more appropriate place for its 05:50PM  
6 use as a fertilizer, would be a method of recoupment  
7 of some of these costs of the transportation;  
8 correct?

9 MR. GRAVES: Object to the form.

10 A Correct. 05:50PM

11 Q And would a complete economic analysis take  
12 that into account?

13 A Yes.

14 Q But that was not the purpose of what you were  
15 trying to set forth in Paragraph 25, was it? 05:50PM

16 MR. GRAVES: Object to the form.

17 A Here I just looked at a simple calculation,  
18 the cost of hauling it out of the watershed.

19 MR. RIGGS: I don't have any other  
20 questions. Ordinarily you have -- you can have an 05:51PM  
21 opportunity to read and sign. How much time do we  
22 have here? We have 30 days. You can get it to us  
23 this week, right, or soon? Okay. You'll have an  
24 opportunity to read and sign. You need to state you  
25 would like to read and sign the deposition. 05:51PM

1 THE WITNESS: I would like to read and  
2 sign.

3 VIDEOGRAPHER: This concludes the  
4 deposition of Dr. Robert Taylor. We are now off the  
5 Record. The time is 5:51 p.m.

05:51PM

6 (Whereupon, the deposition was  
7 concluded at 5:52 p.m.)  
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## SIGNATURE PAGE

I, Robert Taylor, PhD, do hereby certify  
that the foregoing deposition was presented to me by  
Lisa A. Steinmeyer as a true and correct transcript  
of the proceedings in the above styled and numbered  
cause, and I now sign the same as true and correct.

WITNESS my hand this \_\_\_\_\_ day of  
\_\_\_\_\_, 2008.

\_\_\_\_\_  
ROBERT TAYLOR, PhD

SUBSCRIBED AND SWORN TO before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2008.

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Notary Public

My Commission Expires:  
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CORRECTIONS TO THE DEPOSITION OF  
ROBERT TAYLOR, PhD

PAGE AND LINE NUMBER	CORRECTION
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